117-275

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 905.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE THOMAS C. SLOANE, WALTER W. LAW, ET AL., PLAINTIFFS IN ERROR,

vs.

MARCUS ANDERSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED AUGUST 4, 1885.

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INDEX.

	Original.	Print.
Writ of error	1	1
Return to writ of error	2	1
Caption	3	2
Transcript from La Crosse county circuit court	3	2
Complaint	4	2
Service of summons	13	6
Summons	14	6
Answer	16	8
Stipulation to continue	26	12
substitute attorneys	28	12
Service of affidavit and garnishee summons	30	12
Affidavit for garnishee	31	13
Garnishee summons	33	14
Service of affidavit and garnishee summons	36	16
Affidavit for garnishee	37	16
Garnishee summons	39	17
Stipulation as to bond	42	18
Bond	44	19
Stipulation as to bond	48	20
Bond	49	20

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Answer of Sloane *et al.*	53	22
Answer of Farwell *et al.*	65	27
Notice of taking deposition	77	32
Deposition of Chas. E. Alter	79	33
Order to show cause as to removal	90	38
Petition for removal	91	38
Bond for removal	95	40
Order on bond for removal	99	41
Continuance	101	42
"	102	42
"	105	43
Clerk's certificate	107	44
Motion to docket	109	44
Order remanding cause	109	44
Bond	110	45
Citation and service	114	46
Clerk's certificate	116	47

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Wisconsin, in the seventh circuit, Greeting:

Because that in the records and process, and also in the making and rendering of an order in a suit before you, or some of you, between John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, of the city and State of New York, and John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, of the city of Chicago and State of Illinois, plaintiffs in error, and others, and Marcus Anderson, a citizen of the State of Wisconsin, defendant in error, remanding the said suit to the circuit court of Wisconsin, for the county of La Crosse, from whence it came, manifest error has intervened, to the great damage of said plaintiffs in error, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States on the 25th day of July next, at Washington, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to [be] done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington aforesaid, this 25th day of June, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

[Seal U. S. Circuit Court, Western Dis't of Wisconsin.]

F. M. STEWART,
Clerk of the Circuit Court of the United States
for the Western District of Wisconsin.

2 [Endorsed:] Supreme Court of the United States. John Sloane *et al.*, pl'ffs in error, *vs.* Marcus Anderson, def't in error. Writ of error. Filed June 25, 1885. F. M. Stewart, clerk. S. W. Pinney, attorney for pl'ff in error.

The return of the within writ appears by the schedule hereto annexed.

The return of the judges of the circuit court of the United States for the western district of Wisconsin.

In testimony whereof I have hereunto set my hand and the seal of said court, at my office, in the city of Madison, this 14th day of July, A. D. 1885, and of our Independence the 110th year.

[Seal U. S. Circuit Court, Western Dis't of Wisconsin.]

F. M. STEWART, *Clerk.*

3 UNITED STATES OF AMERICA,)
Western District of Wisconsin,) *ss*:

At a stated term of the circuit court of the United States of America for the western district of Wisconsin, begun and held according to law, at the city of Madison, in said district, on the first Monday, being the 1st day of June, A. D. 1885—present and presiding, the Hon. John M. Harlan, associate justice of the Supreme Court of the United States, and the Hon. Ramanza Burr, district judge—among other, the following proceedings were had, to wit:

MARCUS ANDERSON, Plaintiff,

vs.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, Copartners; John N. Farwell, Charles B. Farwell, William D. Farwell, and John L. Harmon, Copartners, and Angus Cameron, Joseph W. Losey, and Charles W. Bunn, Copartners, and Curtis H. Remy, Defendants.

Be it remembered that heretofore, to wit, on the 1st day of June, A. D. 1885, came the above-named defendants and filed in this court a transcript of the record and proceedings in this cause in the circuit court of the State of Wisconsin for La Crosse county, which record is as follows, to wit:

Record.

4 Circuit Court, Lacrosse County.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alenxader Wright, and Charles L. Watson, Copartners; John V. Farwell, Charles B. Farwell, William D. Farwell, & John L. Harmon, Copartners, and Angus Cameron, Joseph W. Losey, and Charles W. Bunn, Copartners, and Curtis H. Remy, Defendants.

The complaint of the above-named plaintiff, respectfully shows to this court:

That at the times hereinafter mentioned, and at all times since the first day of July, 1881, up to the time of the commencement of this action, the defendants, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, were and have been copartners, doing business under the firm name of W. & J. Sloane, and will be hereinafter designated in the complaint by their said firm name.

That at the times hereafter mentioned, and at all times since the first day of July, 1881, the defendants, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, were and have been copartners, doing business under the firm name of John V. Farwell & Co., and will hereafter be designated in the com-

5 plaint by their said firm name.

That at the time hereinafter mentioned, the defendant's,

Angus Cameron, Joseph W. Lesey, and Charles W. Bunn, were co-partners, doing a general law business in the city of La Crosse and State of Wisconsin, under the firm name of Cameron, Losey & Bunn.

That at the times hereinafter mentioned the said Curtis H. Remy was the duly authorized agent of the said defendants, John V. Farwell & Co., and of the said defendants, W. & J. Sloane, and was duly authorized and instructed by them, as the plaintiff is informed and believes, to do and perform in their behalf the acts and things hereinafter complained of, and that his said acts were afterwards duly ratified by said defendants, John B. Farwell & Co., and by said defendants, W. & J. Sloane.

That the said defendants, Cameron, Losey & Bunn, were, at the times aforesaid, the duly authorized and retained attorneys of the said defendants, John V. Farwell & Co., and of the defendants, W. & J. Sloane, and acted in conjunction with the said Curtis H. Remy, under their instruction & direction as such attorneys, in their acts and proceedings hereinafter stated and set forth, and their said acts were afterwards duly ratified by said defendants, John V. Farwell & Co., & the said defendants, W. & J. Sloane.

That on the 28 day of October, 1881, the said plaintiff was a prosperous merchant, and was carrying on a large retail dry goods, notion, and carpet business in the city of La Crosse, and had been for a great number of years engaged in said business in said city.

That his annual cash sale for the previous year exceeded fifty-two thousand dollars, on which he realized a profit of at least ten
6 thousand dollars and a net profit of at least five thousand dollars.

That the plaintiff was on the day last aforesaid in good credit with wholesale merchants, and was worth at least fifteen thousand dollars over and above his debts & liabilities, and had a stock of goods of the value of $27,500 in his store.

That his average sale for the month of September, in the year 1881, amounted to one hundred and fifty dollars per day, and that his daily cash sales for the month of October, 1881, as plaintiff verily believes, would have exceeded two hundred and fifty dollars.

That on the 28th day of September, 1881, the plaintiff was indebted to the said defendants, W. & J. Sloane, in the sum of three thousand three hundred and seventy-eight $\frac{78}{100}$ dollars, no part of which was due except the sum of six hundred sixty-three & $\frac{3}{100}$ dollars & interest.

That on said 28 day of September, 1881, the said defendants, Cameron, Losey & Bunn, & Curtis H. Remy, by order and direction of the said defendants, W. & J. Sloane, procured and caused to be entered, without action, a judgment in form in the circuit court for La Crosse county aforesaid in favor of said W. & J. Sloane in the individual names of the members of said firm as aforesaid as plaintiffs and against this plaintiff as defendant for the full sum of three thousand four hundred and two & $\frac{90}{100}$ dollars damages and one hundred and ninety-nine and $\frac{14}{100}$ dollars costs.

That said pretended judgment was signed by John J. Cole, court

commissioner as an confession under the statute of this State;
7 that there was no affidavit as to the amount due or to become due attached to the complaint or judgment roll in said proceeding, as required by law.

That the said judgment was entered for the entire indebtedness when only a portion, to wit, $663.03 & interest, was due, and the warrant of attorney or authority for confessing judgment did not authorize the entry of judgment for any amount before the same became due.

That said judgment was irregular and void; that said court commissioner had no jurisdiction or authority to sign the same.

That on the 28th day of September, 1881, the plaintiff was indebted to the said defendants, John V. Farwell and Company, in the sum of seventeen hundred and fifty-seven & $\frac{8}{100}$ dollars and interest at eight per cent. from August 30, 1881, no part of which was due except the sum of four hundred and thirty-nine $\frac{27}{100}$ dollars and interest at the rate aforesaid.

That on said 28th day of September, 1881, the said defendants, Cameron, Losey & Bunn, & Curtis H. Remy, by order and direction of the said defendants, John V. Farwell & Co., procured and caused to be entered, without action, a judgment in form in the circuit court for La Crosse county aforesaid in favor of said John V. Farwell & Co. in the individual names of the members of said firm as aforesaid as plaintiffs, and against this plaintiff as defendant for the full sum of seventeen hundred and sixty eight & $\frac{35}{100}$ dollars costs.

That said pretended judgment was signed by John J. Cole, court commissioner as an confession of judgment under the statute of this State.

That there was no affidavit as to the amount due or to be-
8 come due attached to the complaint or judgment roll in said proceeding, as required by law; that the said pretended judgment was entered for the entire indebtedness when only a portion, to wit, the sum of $439.27 and interest, was due, and the warrant of attorney or authority for confessing judgment did not authorize the entry of judgment for any amount before the same became due; that said judgment was irregular and void; that said court commissioner had no jurisdiction or authority to sign the same.

That on the 28th day of September, 1881, the said defendants, Cameron, Losey & Bunn, by order & direction of the said Curtis H. Remy and by order and direction of the said defendants, W. & J. Sloane & John V. Farwell & Co., wrongfully and unlawfully issued executions out of said circuit court on said several judgments for the full amount of damages & costs aforesaid to the sheriff of La Crosse county, which said executions, though regular in form so as to protect said sheriff, were unauthorized and void.

That Mark M. Buttles, the then sheriff of La Crosse county, on the said 28th day of September, 1881, under and by virtue of the said execution, which were both delivered to him at the same time, and under and by virtue of the orders and directions of the said defendants, Cameron, Losey & Bunn, and of the defendants, Curtis H.

Remy & W. & J. Sloane & John V. Farwell & Co., and in the absence of this plaintiff from the city of La Crosse, he having left this city at the express request of the said defendant Curtis H. Remy, who was acting in behalf of said defendants, W. & J. Sloane & John V. Farwell & Co., the said sheriff, without the plaintiff's consent, levied upon, seized, & took possession of the entire stock of goods, fixtures, and furniture and store of this plaintiff, occupied by him under lease, and situated upon the southwest corner of Main & Third street in the city of La Crosse, and seized and took the keys of said store, and turned out and caused to be removed and kept out from said store the clerks and customers of this plaintiff, and shut up said store and stopped all trades and sales therein for and during the space and time of twenty-five days, to his damage in the sum of five thousand dollars, the said stock of goods and fixtures and furniture being then and there worth the sum of thirty thousand dollars.

That in consequence of said wrongful levy & seizure & closing up of plaintiff's store other creditors of this plaintiff, in order to protect their interest and secure their claims against this plaintiff, commenced several suits, proceedings, attachments, and obtained and entered judgments against this plaintiff, which suits, proceedings and judgments would not have been had or brought but for the said wrongful acts of the defendants; and this plaintiff was thereby put to great costs & expense over & above his indebtedness, to wit, the sum of five hundred dollars.

That said wrongful acts of the defendants in entering said judgments and seizing said stock of goods and closing the plaintiff's store injured the credit of this plaintiff and his business, and resulted in a great loss in the profits of his business and prevented him from selling his said goods and stock at a profit, or at all, and for the purpose of protecting himself and his creditors he was in consequence of the said acts of the defendants compelled to and did, on the 29th day of September, 1881, make an assignment of all his property to John M. Holley, assignee, for the benefit of all his creditors.

That had it not been for the said wrongful acts of the said defendants in entering judgment, issuing execution, and seizing the plaintiff's stock of goods the plaintiff could, and would, in the regular *cause* of business, have paid all of his indebtedness without cost or expense.

That the cost of said assignment, including assignee's fees, attorney's fees, and extra *imployes* amounted to the sum of three thousand dollars, which amount was paid by the plaintiff as incurred by him.

That for the purpose of raising funds to pay off the indebtedness of the plaintiff the said assignee was compelled to, and did, sell goods and stock in trade of the plaintiff, which cost the sum of twenty-two thousand dollars, at a loss of five thousand dollars, when, in the regular *cause* of trade and business, the plaintiff could, and would, have made a profit of forty-four hundred dollars to his damages of nine thousand four hundred dollars; that by reason of said wrong-

ful acts of the defendants and the injury to his credit and business his annual sales have been reduced from $52,000 per year to $26,000 per year, to his damage $5,000.

That the said John M. Holly, assignee of the plaintiff, was compelled to pay, and did pay, to the defendants, Cameron, Losey
11 & Bunn, upon said execution, in order to obtain posses-ion of said goods and stocks & trades and store of this plaintiff, the sum of five thousand eight hundred and eighty-three & $\frac{23}{100}$ dollars, five hundred and seventy-two & $\frac{15}{100}$ dollars of which sum was costs & sheriff's fees on said illegal judgments and executions.

That afterwards, and before the commencement of this action, the said judgments & executions aforesaid were, by order of the circuit court of La Crosse county, by direction of the supreme court of this State, duly set aside and vacated.

That afterwards, and before the commencement of this action, the said John M. Holley duly assigned and transferred to the plaintiff all claims and demands and right of action arising or growing out of the transaction and payments hereinbefore set forth, and that the said plaintiff has settled with his creditors, except the defendants, W. & J. Sloane & John V. Farwell & Co., and the said assignee has been duly discharged.

That before the commencement of this action the plaintiff duly demanded of the said defendants, Cameron, Losey & Bunn, the said sum of five thousand eight hundred eighty-three $\frac{23}{100}$ dollars paid by his said assignee to them as aforesaid, and they refused to pay the same, or any part thereof.

That plaintiff's credit & business has been injured & damaged by the aforesaid unlawful acts of the defendants in the sum of at least ten thousand dollars.

Wherefore the plaintiff demands judgment against the said defendants, and each of them, for the sum of twenty-five thousand dollars, besides the costs of this action.

M. P. WING & G. C. PRENTISS,
Pl'ff's Att'ys.

12 STATE OF WISCONSIN, } ss:
County of La Crosse, }

Marcus Anderson, being duly sworn, says that he is the plaintiff in the above-entitled action; that the foregoing complaint is true of his own knowledge, except as to those matters therein stated on information & belief, and as to those matters he believes it to be true.

MARCUS ANDERSON.

Subscribed & sworn to before me this 11 day of April, 1884.

M. P. WING,
Notary Public, La Crosse Co., Wis.

13 STATE OF WISCONSIN, } ss:
La Crosse County, }

I, R. A. Scott, sheriff of La Crosse county, do hereby certify that I duly and personally served the annexed summons & complaint,

in the city of La Crosse, county of La Crosse, on Joseph W. Losey & Charles W. Bunn, two of the defendants therein named, by delivering to and leaving with them, & each of them, a true copy thereof on the 11th day of April, 1884.

R. A. SCOTT,
Sheriff of La Crosse Co.

Fees:	
2 services	$1 50
Travel, 4 miles	40
2 copies folios 50	5 00
Total	$6 90

14 STATE OF WISCONSIN:

In Circuit Court for La Crosse County.

MARCUS ANDERSON, Plaintiff,
against

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, Copartners; John V. Farwell, Charles B. Farwell, William D. Farwell, & John K. Harmon, Copartners, & Angus Cameron, Joseph W. Losey, & Charles W. Bunn, Copartners, & Curtis H. Remy, Defendants.

The State of Wisconsin to the said defendants:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint, a copy of which is herewith served upon you.

M. P. WING & G. C. PRENTISS,
Plaintiff's Attorneys.

P. O. address: La Crosse, La Crosse Co., Wis.

15 [Endorsed:] State of Wisconsin. Circuit court, county of La Crosse. Marcus Anderson, plaintiff, *versus* John Sloane *et al.*, defendants. Summons & comp. Filed May 19, 1885. Chas. Kurtenacker, clerk of court. M. P. Wing & G. C. Prentiss, plaintiff's attorneys.

We hereby admit service of a copy of within summons & complaint upon us this 25th day of April, 1885, as attorneys for John V. Farwell & Co.

CAMERON, LOSEY & BUNN,
Att'ys for John V. Farwell & Co.

16 STATE OF WISCONSIN, *La Crosse County:*

In Circuit Court.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, Copartners; John V. Farwell, Charles B. Farwell, William D. Farwell, John K. Harmon, Copartners; Angus Cameron, Joseph W. Losey, and Charles W. Bunn, Copartners, and Curtis H. Remy, Defendants.

The separate answer of the defendants, Angus Cameron, Joseph W. Losey, and Charles W. Bunn, by C. L. Hood, their attorney, denies each and every allegation of the plaintiff's complaint, except as hereinafter admitted.

Further answering, these defendants admit that the defendants, John Sloane, William D. Sloane, Henry F. Sloan, Thomas C. Sloan, Walter W. Law, Alexander Wright, and Charles L. Watson, were and are copartners, as alleged in the complaint, and that the defendants John V. Farwell and John K. Harmon were and are copartners, as alleged in the complaint, and that these defendants, Angus Cameron, Joseph W. Losey, and Charles W. Bunn, were and are copartners, as alleged in the complaint, and that Curtis H. Remy was the duly authorized agent of the said defendants John
17 V. Farwell and Company and the said defendants W. and J. Sloan, and was duly and severally authorized and instructed by them to do and perform in their behalf the acts and matters referred to herein, and that his acts were afterwards duly and severally ratified by said John V. Farwell and Company and said defendants W. and J. Sloan, as alleged in the complaint.

And further admits that these defendants, Angus Cameron, Joseph W. Losey, and Charles W. Bunn, were attorneys-at-law duly and severally authorized and retained by the said defendants John V. Farwell and Company and the said defendants W. and J. Sloan to act in said matters in conjunction with the said Curtis H. Remy, under his and their instructions and directions, and that their acts were afterwards duly ratified by said other defendants severally, as alleged in the complaint.

These defendants, further answering, admit that on the 28th day of September, 1881, the plaintiff was indebted to the said defendants W. and J. Sloan, but allege that said indebtedness amounted to $3,402.90, and admit that no part of the same was due, except the sum of $603.03 and interest, as alleged, and admit that on the said 28th day of September, 1881, these defendants, by order and direction of the said W. and J. Sloan, procured and caused to be entered without action a judgment by confession in favor of the said W. and J. Sloan against the plaintiff, Marcus Anderson, for the full sum of said debt, with costs, as alleged in the complaint,
18 which judgment was signed by John J. Cole, court commissioner, as alleged; and admit that on the same day the plain-

tiff was indebted to the defendants, John V. Farwell and Company, but allege that the amount of said indebtedness was $1,768.38, no part of which was due, except the sum of $439.27 and interest, as alleged, and admit that on the said 28th day of September these defendants, by order and direction of the said defendants, John V. Farwell and Company, procured and caused to be entered without action a judgment by confession in favor of said John V. Farwell and Company against the plaintiff, Marcus Anderson, for the amount of the said debt, as aforesaid, with costs, as stated in the complaint, which judgment was also duly signed by the said John J. Cole, court commissioner; and admit that on or about the said 28th day of September these defendants, by order and direction of their said respective clients, acting separately, and said defendant, Curtis H. Remy, issued executions upon said judgments for the full amount of damages and costs, as aforesaid, to the sheriff of La Crosse county, which executions were regular in form; and admit that on the same day, under and by virtue of said executions, and by directions of these defendants and said other defendants, the said sheriff levied upon, seized, and took possession of the stock of goods, fixtures, and furniture in the store of the plaintiff; and admit that afterwards, and before the commencement of this action, the
19 said judgments and executions were duly set aside by order of the circuit court of La Crosse county, as alleged in the complaint; and admit that before the commencement of this action the plaintiff duly demanded of these defendants the sum of $5,883.23, as alleged.

For further answer these defendants allege that attached to the complaints and judgment-rolls in said proceedings were due and proper affidavits of the amount due and to become due upon each claim, as required by law; and though admitting that the said judgments were entered for the whole amount due and to become due, the defendants allege that such entry of judgments was fully authorized by the warrant of attorney attached to said judgments-rolls, and allege that said judgments were regular and valid, and the court commissioner had full jurisdiction and authority to sign the same.

These defendants further allege that said plaintiff was, on the said 28th day of September, not a prosperous merchant, and that though he had been engaged in business in said city of La Crosse for some years, he had failed two or more times in the same business at the same place, and at the time in question his credit was poor; that his creditors were pressing him; that he must inevitably have failed at that time, even had these defendants not caused said judgments and executions to be entered and issued; and the defendants allege that shortly before the levy of their said executions, and on the 26th day of September, 1881, judgment by confession was entered in the circuit court of La Crosse county in favor of O. R. Keith and Company,
20 and against the said Marcus Anderson for the sum of $1,137.04, upon which executions had been issued and levied upon the same property seized by these defendants on or about the 26th day

September, 1881, the levy of which executions had precipitated and made inevitable the failure of said plaintiff at that time.

The defendants, further answering, allege that said defendants, W. and J. Sloan, were not jointly concerned with the said defendants, John V. Farwell and Company, in the entry of said judgments or the issuing of levying of said executions, nor were their executions delivered to the sheriff or levied at the same time. On the contrary, these defendants allege that said W. and J. Sloan caused the judgment in their favor to be entered and an execution thereon to be issued and levied of their own accord, and not in conjunction with or in any way connected with said defendants, John V. Farwell and Company, and the said defendants, John V. Farwell and Company, caused the judgments in their favor to be entered and an execution issued and levied thereon of their own accord, not in conjunction with and without connection with the said defendants, W. and J. Sloan; and the said defendants, W. and J. Sloan, acting for themselves alone and not in behalf of said John V. Farwell and Company, caused their execution first to be issued and delivered to the sheriff of La Crosse county, and caused a levy to be first made thereon
21 before the levy was made on the execution in favor of said John V. Farwell and Company.

Wherefore these defendants plead in abatement that there is a misjoinder of parties defendant, inasmuch as the defendants, W. and J. Sloan, and the defendants, John V. Farwell and Company, are not jointly concerned in this matter or jointly liable to the plaintiff herein.

Further answering, these defendants admit that on the 29th day of September, 1881, the plaintiff made an assignment of all his property to one John M. Holley for the benefit of all his creditors, but allege that the said assignment was not made necessary or caused by acts of these defendants, but was necessitated and caused by the insolvent and failing condition of the said Marcus Anderson.

Further answering, these defendants allege that the plaintiff, Marcus Anderson, after the levy of said executions made a motion in the circuit court of La Crosse county to set aside judgments, and said exceptions aside, and vacate all proceedings thereunder; which said motion, on or about the 18th day of October, 1881, was duly denied; that thereupon, on or about the said 18th day of October, 1881, the said John M. Holley duly made and presented to the circuit court of La Crosse county his petition, duly verified, which was consented to in writing by the said Marcus Anderson, made on that day, in which the said John M. Holly and the said Marcus Anderson set forth the said judgments of the defendants, W. and J. Sloan and J. V. Farwell and Co.,
22 and the fact of said execution, levies, and the possession of the sheriff of said assigned property under said executions, and upon the representation contained in said petition, that said claims secured under said execution levies were valid claims against the said stock prior to the said assignment, said petition prayed an order to be made by the court allowing the assignee to settle, compromise, or pay off, as should seem best, the said execution claims, and said petition was consented to by a number of the creditors of

said Marcus Anderson in writing, which consent was procured by the said Marcus Anderson. That thereupon, and on the 19th day of October, 1881, the court duly made an order as prayed in said petition, and as before stated; that on the 20th day of October, 1881, the said Marcus Anderson duly settled and compromised the said litigation and the judgments by confession in favor of said W. and J. Sloan and said John V. Farwell and Company, and the said executions levied thereon and all claims growing and arising out of the same, as follows: These defendants agreed to receive in payment for said judgments and for the release of said executions and in consideration of said settlement the notes of the said John M. Holley, guaranteed by one Charles B. Solberg, for the amount for which said levies were made, and said Marcus Anderson procured said assignee to sign and said Solberg to endorse said notes, and voluntarily paid or procured said assignee to pay on his account the costs of said levies to the sheriff of La Cross county, and voluntarily
23 delivered to these defendants the said notes in full satisfaction and settlement of the said judgments and execution levies and all matters and claims arising and growing out of the same. Whereupon these defendants accepted said notes in satisfaction and payment as aforesaid and satisfied the said judgments, and at the request of said Marcus Anderson turned over the whole of said attached property to the said John M. Holley as assignee for the benefit of said Marcus Anderson, to be applied, and the same was in fact applied, by the said assignee in payment of the said Marcus Anderson's debts, at his instance and request and with his consent.

These defendants further allege that in all the matters and things alleged in the complaint and set forth in the answer these defendants acted without any personal interest and solely as attorneys-at-law, in good faith, and in pursuance of the directions of their said clients.

Wherefore these defendants demand the judgment of this court dismissing the complaint of the plaintiff herein, and for their costs.

C. L. HOOD,
Attorney for Defendants, Angus Cameron, Joseph W. Losey, and Charles W. Bunn.

STATE OF WISCONSIN, }
La Crosse County, } ss:

Charles W. Bunn, being duly sworn, deposes and says that he is one of the defendants above named; that he has read the foregoing answer and knows the contents thereof; that the same is true
24 of his own knowledge, except as to those matters stated on information and belief, and as to those matters he verily believes it to be true.

C. W. BUNN.

Subscribed and sworn to before me this 30th day of July, 1884.
THOMAS A. DYSON,
Notary Public, La Crosse Co., Wis.

25 [Endorsed:] State of Wisconsin, La Crosse county. In circuit court. Marcus Anderson *vs.* John Sloan *et al.* Answer of Cameron, Losey, and Bunn. Filed May 19, 1885. Chas. Kurtenacker, clerk of court.

Due service of a copy of the within answer admitted this 31st day of July, 1884. M. P. Wing & G. C. Prentiss, plaintiff's attorneys.

26 Circuit Court, La Crosse County.

MARCUS ANDERSON, Plaintiff, *vs.* JOHN SLOANE *et al.*, Defendants.

It is hereby stipulated and agreed by and between Messrs. Wing and Prentiss, attorneys for the above-named plaintiff, and C. L. Hood, in behalf of and as attorney for the defendants, Cameron, Losey, and Bunn, in the above-entitled action that the said action be continued at the November term of the circuit court of La Crosse county, as on the application of said defendants, Cameron, Losey, and Bunn, without costs to be taxed to either party.

Dated September 18th, 1884.

M. P. WING & G. C. PRENTISS,
Plaintiff's Attorneys.

C. L. HOOD,
Attorney for Defendants, Angus Cameron, Joseph W. Losey, and Charles W. Bunn.

27 [Endorsed:] Circuit court, La Crosse county. Marcus Anderson *vs.* John Sloane *et al.* Stipulation to continue case over November term. Filed May 25th, 1885. Chas. Kurtenacker, clerk of court.

28 STATE OF WISCONSIN, *La Crosse County:*

MARCUS ANDERSON, Pl'ff, *vs.* JOHN SLOANE *et al.*, Defendants.

It is hereby stipulated and agreed that C. L. Hood, Esq., of La Crosse, Wis., may be substituted as attorney for defendants, J. V. Farwell & Co., in above action in place of Cameron, Losey, & Bunn.

May 13th, 1885.

M. P. WING & G. C. PRENTISS,
Plaintiff's Attorneys.

CAMERON, LOSEY & BUNN,
Attorneys for J. V. Farwell & Co.

29 [Endorsed:] Circuit court, La Crosse county. Marcus Anderson *vs.* John Sloane *et al.* Stipulation substituting C. L. Hood ass. att'y for John V. Farwell & Co. in place of Cameron, Losey & Bunn. Filed May 19, 1885. Chas. Kurtenacker, clerk of court.

30 STATE OF WISCONSIN, } *ss:*
La Crosse County, }

I certify that I served the annexed affidavit & garnishee summons in the city & county of La Crosse, on Angus Cameron, Joseph W. Losey & Charles W. Bunn, copartners, by delivering to & leaving with

Joseph W. Losey, a member of said firm of Cameron, Losey & Bunn, true copies thereof, with the date of service endorsed on said garnishee summons, April 28th, 1885. I also served said affidavit & garnishee summons on John V. Farwell, Charles B. Farwell, William D. Farwell, & John K. Harmon, copartners, by delivering to Joseph W. Losey, one of the attorneys for said John V. Farwell, Charles B. Farwell, William D. Farwell & John K. Harmon, copartners, as aforesaid, true copies thereof, with the date of service endorsed thereon, the 28th day of April, 1885. I further certify that John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, & Charles L. Watson, & Curtis H. Remy could not be found by me in my county & have no place of abode, agent, or attorney in this county known to me.

Dated April 28th, 1885.

OLE JENSEN, *Sheriff.*

Fees:	
2 services	$1 50
2 copies, 12 fol.	1 20
Travel, 2 miles	20
	$2 90

31 *Affidavit for Garnishee.*

THE STATE OF WISCONSIN:

In Circuit Court for La Crosse County.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, & Charles L. Watson, Copartners (doing business under the firm name of W. & J. Sloane); John V. Farwell, Charles B. Farwell, William D. Farwell, & John K. Harmon, Copartners (doing business under the firm name of John V. Farwell & Co.); Angus Cameron, Joseph W. Losey, & Charles W. Bunn, Copartners (doing business under the firm name of Cameron, Losey & Bunn), & Curtis H. Remy, Defendants.

THE STATE OF WISCONSIN, } *ss:*
County of La Crosse, }

Marcus Anderson, being duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that an action in the above-entitled cause, sounding in tort, exists and has been commenced in the circuit court for the county of La Crosse; that the defendants in said action are now jointly & severally indebted to the said plaintiff in the sum of twenty-five thousand dollars over and above all offsets upon the plaintiff's claim for which said action is brought.

32 The deponent verily believes that Stark Bros. Co., a corporation, & Bernhard Goldsmith are severally indebted to, and

have property, real and personal, in their possession or under their control, belonging to, the said defendants, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, & Charles L. Watson, copartners, doing business under the firm name of W. & J. Sloane, in the above-entitled action, and that the said defendants, W. & J. Sloane, & the individuals comprising said firm have not property liable to execution sufficient to satisfy plaintiff's demand in this action, and that the indebtedness and property mentioned in this affidavit are, to the best of the knowledge and belief of this deponent, not by law exempt from seizure or sale upon execution; that the said defendants, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, & Charles L. Watson, are not residents of this State.

MARCUS ANDERSON.

Subscribed and sworn to before me this 24th day of April, 1885.
[NOTARIAL SEAL.] M. P. WING,
Notary Public.

33 *Garnishee Summons.*

THE STATE OF WISCONSIN:

In Circuit Court for La Crosse County.

MARCUS ANDERSON, Plaintiff,

versus

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, & Charles L. Watson, Copartners (doing business under the firm name of W. & J. Sloane); John V. Farwell, Charles B. Farwell, William D. Farwell, & John K. Harmon, Copartners (doing business under the firm name of John V. Farwell & Co.); Angus Cameron, Joseph W. Losey, & Charles W. Bunn, Copartners (doing business under the firm name of Cameron, Losey & Bunn), & Curtis H. Remy, Defendants; Stark Bros. Co., a corporation, & Bernhard Goldsmith, Garnishees.

The State of Wisconsin to the above-named garnishees & each of them:

You are hereby summoned, pursuant to the annexed affidavit, as garnishees of the defendants, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, & Charles L. Watson, copartners (doing business under the firm name of W. & J. Sloane), and required, within twenty days after
34 service of this summons upon you, exclusive of the day of service, to answer according to law whether you are indebted to or have in your possession or under your control any property, real or personal, belonging to such defendants, and to serve a copy of your answer on the undersigned at the city of La Crosse, in the county of La Crosse, and in case of your failure so to do you will be

liable to further proceedings according to law, of which the said defendants will also take notice.

M. P. WING & G. C. PRENTISS,
Plaintiff's Attorneys.

P. O. address: La Crosse, La Crosse Co., Wis.

Served April 25, 1885.

M. P. WING & G. C. PRENTISS,
Pl'ff's Att'ys.

35 MILWAUKEE COUNTY, *ss:*

I certify that at the city and county of Milwaukee, on the 27th day of April, A. D. 1885, I served the within affidavit and summons in garnishment annexed on the within-named garnishee, Stark Bros. Company, by delivering to and leaving with Charles G. Stark, president of the aforesaid company and doing business as such president, at the city of Milwaukee, a true copy thereof and of each of them.

GEO. PASCHEN, *Sheriff,*
By P. VAN VECHTER, JR.,
Under Sheriff.

[Endorsed:] State of Wisconsin. In circuit court for La Crosse county. Marcus Anderson *versus* John V. Farwell *et al.*, def'ts, & Stark Bros. Co., *et al.*, garnishees. Affidavit and garnishee summons. Filed May 19, 1885. Chas. Kurtenacker, clerk of court. M. P. Wing & G. C. Prentiss, plaintiff's attorneys.

MILWAUKEE COUNTY, *ss:*

I certify that at the city and county of Milwaukee, on the 25th day of April, A. D. 1885, I served the within affidavit and summons in garnishment on the within-named garnishees, Bernhard Goldsmith, personally, by delivering to and leaving with him a true copy thereof and of each; and on the within-named garnishees, Stark Bros. & Co., a corporation, by delivering to and leaving with Charles G. Stark, president of the aforesaid corporation and doing business as such president, at the city of Milwaukee, a true copy thereof and of each of them, said last-mentioned service having been made on the 25th day of April, A. D. 1885.

GEO. PACHEN, *Sheriff,*
By P. VAN VECHTER, JR.,
Under Sheriff.

Fees:

Service	$1 50
Travel	40
Copies	80
	$2 70

36 STATE OF WISCONSIN, } ss:
La Crosse County, }

I certify that I duly and personally served the annexed affidavit and garnishee summons in the city & county of La Crosse on Mons. Anderson, Alfred L. Anderson, Samuel Anderson, & John Paul, garnishee defendants therein named, by delivering to and leaving with them & each of them true copies thereof with the date of service endorsed thereon, as required by law, on the 18th day of April, 1885. I also duly and personally served said affidavit & garnishee summons on Angus Cameron, Joseph W. Losey, & Charles W. Bunn, copartners, by delivering to and leaving with Joseph W. Losey, a member of said firm of Cameron, Losey, & Bunn, true copies thereof with the date of service endorsed thereon, as required by law, April 18th, 1885, in the city & county of La Crosse.

I further certify that the defendants, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, copartners, and John V. Farwell, Charles B. Farwell, William D. Farwell, & John K. Harmon, copartners, after diligent search & inquiry, could not be found by me in the county of La Crosse, and that said persons are, as I am informed & believe, non-residents of the State of Wisconsin.

Dated April 18th, 1885.

OLE JENSEN, *Sheriff.*

Fees:

5 services	$2 50
5 copies, 25 fol.	2 50
Travel, 5 miles	50
	$5 50

37 *Affidavit for Garnishee.*

THE STATE OF WISCONSIN:

In Circuit Court for La Crosse County.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, & Charles L. Watson, Copartners; John V. Farwell, Charles B. Farwell, William D. Farwell, & John K. Harmon, Copartners; Angus Cameron, Joseph W. Losey, & Charles W. Bunn, Copartners, & Curtis H. Remy, Defendants.

THE STATE OF WISCONSIN, } ss:
County of La Crosse, }

MARCUS ANDERSON, being duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that an action in the above-entitled suit sounding in tort exists and has been commenced in the circuit [court] for the county of La Crosse; that the defend-

ants in said action are now jointly & severally indebted to the said plaintiff in the sum of twenty-five thousand dollars over and above all offsets upon the plaintiff's claim, for which said action is brought; that deponent verily believes that Mons. Anderson, Alfred L. Anderson, & Samuel Anderson are jointly & severally, & John Paul & J. J. Mason are severally, indebted to and have property, real and personal, in their possession, or under their control,
38 belonging to the said defendants, John V. Farwell, Charles B. Farwell, William D. Farwell, John K. Harmon, comprising the firm of John V. Farwell & Co., in the above-entitled action, and that the said defendants, John V. Farwell & Co., individuals comprising said firm, have not property liable to execution sufficient to satisfy plaintiff's demands in this action, and that the indebtedness and property mentioned in this affidavit are, to the best of the knowledge and belief of this deponent, not by law exempt from seizure or sale upon execution; that the said defendants, John V. Farwell, Charles B. Farwell, William D. Farwell, & John K. Harmon, are not residents of this State.

Subscribed and sworn to before me this 16th day of April, 1885.

M. P. WING,
Notary Public, La Crosse Co., Wis.

39 *Garnishee Summons.*

THE STATE OF WISCONSIN:

In Circuit Court for La Crosse County.

MARCUS ANDERSON, Plaintiff,

versus

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, & Charles L. Watson, Copartners; John V. Farwell, Charles B. Farwell, William D. Farwell, & John K. Harmon, Copartners; Angus Cameron, Joseph W. Losey, & Charles W. Bunn, Copartners, & Curtis H. Remy, Defendants; Mons. Anderson, Alfred L. Anderson, & Samuel Anderson, jointly & severally, & John Paul & J. J. Mason, severally, Garnishees.

The State of Wisconsin to the above-named garnishees:

You are hereby summoned, pursuant to the annexed affidavit, as garnishees of the defendants, John V. Farwell, Charles B. Farwell, William D. Farwell, & John K. Harmon, partners, under the name of John V. Farwell & Co., and required, within twenty days after service of this summons upon you, exclusive of the day of service, to answer, according to law, whether you are indebted to or have in your possession or under your control any property, real or personal, belonging to such defendants, and to serve a copy of your answer on the undersigned, at the city of La Crosse, in the county of La Crosse, and in case of your failure so to do you will be

liable to further proceedings according to law, of which the said defendant will also take notice.

M. P. WING & G. C. PRENTISS,
Plaintiff's Attorneys.

P. O. address: La Crosse, La Crosse Co., Wis.

[Endorsed:] State of Wisconsin. In the circuit court of La Crosse county. Marcus Anderson *vs.* John Sloane, &c., John V. Farwell, &c., Angus Cameron *et al.*, defendants, & Mons. Anderson & John Paul *et al.*, garnishees. Affidavid and garnishee summons. Filed May 19, 1885. Chas. Kurtenacker, clerk of court. M. P. Wing & G. C. Prentiss, plaintiff's attorneys.

STATE OF WISCONSIN, } ss:
Monroe County, }

SHERIFF'S OFFICE.

I, E. R. Jones, sheriff of Monroe Co., Wis., hereby certify that on the 17th day of April, 1885, at the county of Monroe, I personally served upon J. J. Mason, one of the garnishees therein named, the within summons and annexed affidavit, by delivering to & leaving with him true copies thereof, with the date of service noted on the back of such copies; that after diligent search & inquiry I could not find any of the defendants or their attorneys or any of the other garnishees in my county whereon to make service.

E. R. JONES, *Sheriff.*
By ERNEST BARTELS,
Deputy Sheriff.

Dated April 18th, 1885.

Fees:

Travel, 1 mile	10
Service on 1 def't	1 00
Copies, 5 folios	50
	$1 60

Circuit Court, La Crosse County.

MARCUS ANDERSON, Pl'ff, *vs.* JOHN SLOANE *et al.*, Defendants.

It is hereby stipulated and agreed that the annexed bond shall be, and the same is hereby, deemed sufficient as to amount and justification of sureties, and the plaintiff hereby waives the giving of a bond in any greater or larger sum and the justification of sureties in any greater sum than that mentioned in said bond.

Dated May 2nd, 1885.

M. P. WING & G. C. PRENTISS,
Plaintiff's Attorneys.
CAMERON, LOSEY & BUNN,
Att'ys for John V. Farwell and Company.

[Endorsed:] Filed May 2, 1885. Chas. Kurtenacker, clerk of court.

44 THE STATE OF WISCONSIN, *La Crosse County:*

Circuit Court.

MARCUS ANDERSON

vs.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles B. Farwell, William D. Farwell, John K. Harmon, Angus Cameron, Joseph W. Losey, Charles W. Bunn, and Curtis H. Remy.

Whereas Mons. Anderson and Sons, John Paul, and J. J. Mason *has* been summoned and required to appear as garnishees of the defendants, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, in a suit pending in which Marcus Anderson is plaintiff and John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles B. Farwell, William D. Farwell, John K. Harmon, Angus Cameron, Joseph W. Losey, Charles W. Bunn, and Curtis H. Remy are defendants, in which suit the complaint has been filed and judgment has not been rendered; and

Whereas the said defendants, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon desire to have said garnishment released, as is by law in such case provided may be done:

45 Now, therefore, we, John V. Farwell and Company, of Chicago, Illinois, as principals, and Mons. Anderson and John Paul, who are residents of the city of La Crosse, county of La Crosse, and State of Wisconsin, and freeholders in said State, as sureties, do hereby undertake that we will, on demand, pay to the plaintiff in this action the amount of the judgment, with all costs, that may be recovered against such defendants in this action, not exceeding the sum of thirty thousand dollars.

In testimony whereof the parties hereto have set their hands and seals this 29th day of April, A. D. 1885.

JNO. V. FARWELL & CO. [SEAL.]
JNO. T. CLAMASEN. [SEAL.]
C. B. FARWELL. [SEAL.]
MONS. ANDERSON. [SEAL.]
JOHN PAUL. [SEAL.]

STATE OF WISCONSIN, } *ss*:
La Crosse County, }

Mons. Anderson, being duly sworn, says that he is a resident and freeholder within the State of Wisconsin; that he is worth the sum of thirty thousand dollars in property within the State of Wisconsin, over and above all his debts and liabilities and property exempt from execution.

MONS ANDERSON.

Subscribed and sworn to before me this 30th day of April, A. D. 1885.

THOMAS A. DYSON,
Notary Public, La Crosse Co., State of Wisconsin.

46 STATE OF WISCONSIN, } ss:
La Crosse County, }

John Paul, being duly sworn, says that he is a resident and freeholder within the State of Wisconsin; that he is worth the sum of thirty thousand dollars in property within the State of Wisconsin, over and above all his debts and liabilities and property exempt from execution.

JOHN PAUL.

Subscribed and sworn to before me this 2nd day of May, A. D. 1885.

THOMAS A. DYSON,
Notary Public, La Crosse Co., State of Wisconsin.

47 [Endorsed:] Circuit court, La Crosse Co. Marcus Anderson *vs.* John Sloane *et al.* Bond. Filed May 2, 1885. Chas. Kurtenacker, clerk of court.

48 STATE OF WISCONSIN, *La Crosse County:*

MARCUS ANDERSON, Pl'ff, *vs.* JOHN SLOANE *et al.*, Defendants.

It is hereby stipulated that the annexed bond shall be considered a full and sufficient bond for the release of Stark Brothers Company and Bernhard Goldsmith as garnishees in said action, both as to amount and justification of sureties, the plaintiff hereby waiving the giving of a bond in any larger sum and the justification of the sureties in any greater amount than thirty thousand dollars.

May 13th, 1885.

M. P. WING & G. C. PRENTISS,
Plaintiff's Attorneys.

49 THE STATE OF WISCONSIN:

Circuit Court, La Crosse County.

MARCUS ANDERSON
vs.
JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Andrew Wright, John V. Farwell, Charles B. Farwell, William D. Farwell, John K. Harmon, Angus Cameron, Joseph W. Losey, Charles W. Bunn, and Curtis H. Remy.

Whereas Stark Brothers Company, a corporation, and Bernhard Goldsmith have been summoned and required to appear as garnishees of the defendants, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, and Andrew Wright, in a suit pending in which Marcus Anderson is plaintiff and John Sloane, William D. Sloane, Walter W. Law, and Andrew Wright,

John V. Farwell, Charles B. Farwell, William D. Farwell, John K. Harmon, Angus Cameron, Joseph W. Losey, Charles W. Bunn, and Curtis H. Remy are defendants, in which suit the complaint has been filed and judgment has not been rendered;

And whereas the said defendants, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, and Andrew Wright, desire to have said garnishment released, as is by law in such cases provided may be done:

Now, therefore, we, John Sloane, William D. Sloane, Henry
50 F. Sloane, Thomas C. Sloane, Walter W. Law, and Andrew Wright, copartners under the firm name of W. and J. Sloane, of the city of New York, as principals, and Mons. Anderson, of the city of La Crosse, county of La Crosse, and Charles G. Stark, of the city of Milwaukee and State of Wisconsin, and freeholders in said State of Wisconsin, and John V. Farwell and Co. and John T. Chamasen, of Chicago, Illinois, as sureties, do hereby undertake that we will on demand pay to the plaintiff in this action the amount of the judgment, with all costs that may be recovered against such defendants in this action, not exceeding the sum of thirty thousand dollars.

In testimony whereof the parties hereto have set their hands and seals this 5th day of May, A. D. 1885.

W. & J. SLOANE.	[SEAL.]
WM. D. SLOANE.	[SEAL.]
JOHN V. FARWELL & CO.	[SEAL.]
JOHN T. CHAMASEN.	[SEAL.]
MONS. ANDERSON.	[SEAL.]
CHARLES G. STARK.	[SEAL.]

51 STATE OF WISCONSIN, } ss:
La Crosse County, }

Mons. Anderson, being duly sworn, on oath deposes and says that he is worth thirty thousand dollars in property within the State of Wisconsin, over and above all his debts and liabilities and property exempt from execution.

Subscribed and sworn to before me this 11th day of May, 1885.

THOMAS A. DYSON,
Notary Public, La Crosse Co., Wis.

STATE OF WISCONSIN, } ss:
County of Milwaukee, }

Charles G. Stark, being duly sworn, on oath deposes and says that he is worth the sum of thirty thousand dollars in property within the State of Wisconsin, over and above all his debts and liabilities and property exempt from execution.

CHARLES G. STARK.

Subscribed and sworn to before me this 12th day of May, 1885.

JOSHUA STARK,
Notary Public, Milwaukee Co., Wis.

52 [Endorsed:] Circuit court, La Crosse county. Marcus Anderson *vs.* John Sloane *et al.* Bond for release of Stark Bros. Co. and Bernhard Goldsmith, as garnishees of W. & J. Sloane. Filed May 18, 1885. Chas. Kurtenacker, clerk of court.

53 STATE OF WISCONSIN:

Circuit Court for La Crosse County.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, Copartners, impleaded with John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, Copartners, and Angus Cameron, Joseph W. Losey, Charles W. Bunn, and Curtis H. Remy, Defendants.

The above-named defendants, John Sloane, William D. Slane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, for answer to the plaintiff's complaint in this action, admit that at the time charged in said complaint they were copartners, doing business under the firm name and style of W. and J. Sloane; and they deny each and every other allegation, matter, and thing in said complaint stated, except as hereinafter specially admitted.

And these defendants, further answering, admit that the said John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon were copartners as charged in said complaint, under the firm name and style of John V. Farwell and Co.; and that the defendants, Angus Cameron, Joseph W. Losey, and Charles W. Bunn,

54 were at the time charged in said complaint copartners in the practice of the law at La Crosse, Wisconsin, under the firm name and style of Cameron, Losey and Bunn; and that the defendant, Curtis H. Remy, at the time mentioned in said complaint, was an attorney-at-law, and in all that he did in the name and on behalf of said defendants, W. and J. Sloane, he acted as and was their duly authorized attorney, and that they afterwards ratified and approved all that he did in their name and behalf in relation to the marters stated in said complaint, and in like manner admit that the defendants, Cameron, Losey, and Bunn, in all that they did in relation to the matters charged in said complaint in the name and on behalf of the defendants, W. and J. Sloane, acted as and were the duly authorized attorneys of said defendants; and that said defendants, W. and J. Sloane, afterwards ratified and approved all that they did in their name and behalf in relation to the matters stated in said complaint.

And these defendants, further answering, admit and allege that on the 28th day of September, A. D. 1881, the said plaintiff was indebted to these defendants in the sum of three thousand four hundred and two dollars and ninety cents, no part of which was past due, except the sum of six hundred and sixty-three dollars and

three cents, and accrued interest thereon, and they admit that on that day the defendants, Cameron, Losey, and Bunn, and Curtis H. Remy, as their attorneys, and acting in their behalf under their authority, procured and caused to be entered by confession, without
55 action, a judgment in the circuit court for La Crosse county in favor of the said W. & J. Sloane against the said plaintiff for the full sum of their said debt, with costs, as stated in said complaint, which said judgment was signed by John J. Cole, court commissioner, and was docketed and recorded in the office of the clerk of the circuit court for La Crosse county; and they allege on information and belief that at the time of the entry and docketing of said judgment in said court the said circuit court had lawful jurisdiction of the subject matter of said proceeding, and of the person of the said Marcus Anderson; and upon information and belief they admit that on the day and year last aforesaid the plaintiff was indebted to the said John V. Farwell and Co., and allege that it was in the sum of one thousand seven hundred and sixty-eight dollars and thirty-eight cents, no part of which was due except the sum of four hundred and thirty-nine dollars and twenty-seven cents; and they admit on information and belief that on the 28th day of September, A. D. 1881, the said John V. Farwell and Co. procured and caused to be entered by confession, without action, a judgment in favor of the said John V. Farwell & Co. against the said plaintiff for the full sum of their debt, with costs, as stated in said complaint; which said judgment was signed by John J. Cole, court commissioner, and was duly docketed and recorded in the office of the clerk of the circuit court for La Crosse county.

And upon information and belief they allege that at the time
56 of the entry and docketing of said last-mentioned judgment in said court, the said circuit court for La Crosse county had lawful jurisdiction of the subject-matter of said proceeding and of the person of the said Marcus Anderson, the plaintiff in this suit; and they admit in like manner that the defendants, Cameron, Losey & Bunn, were and acted as the attorneys for the said John V. Farwell & Co. in the entry of said judgment. And these defendants, upon information and belief, admit that afterwards and on or about the 28th day of September aforesaid, their said attorneys, acting under their authority, caused to be issued and delivered to the sheriff of La Crosse county an execution upon their said judgment so entered and docketed as aforesaid, and that said execution was regular in form and fair on its face, and that on or about the day last aforesaid the said attorneys for the said John V. Farwell & Co., acting under authority from them and not otherwise, caused to be issued and delivered to the sheriff of La Crosse county an execution upon the judgment so entered and docketed as aforesaid in favor of the said John V. Farwell & Co. against said Marcus Anderson for the full amount of the damages and costs as aforesaid, and that said execution was regular and fair on its face; that on the day and year last aforesaid the said sheriff of La Crosse county, acting under direction of the plaintiffs in said respective executions separately, through their attorneys, respectively, levied upon, seized, and took possession

of the stock of goods, fixtures, and furniture in the store of the plaintiff; and these defendants admit that afterwards and before the commencement of this action the said judgments and executions were set aside by orders of the circuit court for La Crosse county, as alleged in the said complaint, and that before the com-
57 mencement of this action the plaintiff herein demanded of the said Cameron, Losey & Bunn the sum of five thousand eight hundred and eighty-three dollars and twenty-three cents, and that they refused to pay the same.

And these defendants, further answering, allege that attached to the complaints and judgments rolls in said proceeding in the circuit court for La Crosse county, in the entry of said judgments, are due and proper affidavits of the amount due and to become due in each of said cases upon the claim therein, as required by law, and admitting that the said judgments were entered for the whole amount due and to become due in each case, respectively, and they allege that the entry of each of said judgments was fully authorized by the warrant of attorney attached to said respective judgment rolls, and, on information and belief, they allege that said judgments were, and each of them was, regular and valid, and that the said court commissioner had full jurisdiction and authority to sign the same.

And these defendants, further answering, allege that at the time of the entry of said judgments and the levy of said several executions the said plaintiff was not a prosperous merchant; that though he had been engaged in business in said city of La Crosse for many years, he had failed two or three times in the same business in which he was then engaged; that at the time in question his credit had become greatly impaired and was poor, and that his creditors were pressing him for payments which he could not make when, and as as they became due, and that his failure was inevitable and a foregone conclusion, even had not these defendants and the said
58 John V. Farwell & Co. entered their respective judgments and issued executions thereon and levied the same, respectively, on his property, as herein stated; that shortly before the levy thereof, and on the 26th day of the same month, judgment by confession was entered in the circuit court for La Crosse county in favor of O. R. Keith & Co. against the said plaintiff, Marcus Anderson, for the sum of one thousand one hundred and thirty-seven dollars and four cents, upon which execution was issued and levied upon the same property seized upon the executions hereinbefore mentioned about three days before the said levies upon and seizures thereof hereinbefore first stated, and that the failure of said plaintiff was precipitated and made inevitable by the said levy so made on his property under and by virtue of the said execution and judgment of the said O. R. Keith & Co.; that the said levies upon and seizure of said plaintiffs under and by virtue of the execution of these defendants, and under and by virtue of the execution in favor of the said John V. Farwell & Co., were made in good faith and for the sole purpose of securing the payment of the sums of money mentioned therein, then justly due and owing to them, respectively, and which, owing to the in-

solvent condition of the said Marcus Anderson, they were in great peril of losing.

And these defendants, further answering, allege that they were not jointly concerned with the said John V. Farwell & Co. in the entry of said judgments or the issue of levying of the said executions, nor were their said executions delivered to the said
59 sheriff or levied at the same time; that these defendants caused the judgment in their favor to be entered and an execution in their favor to be issued therein and levied of their own accord, and not in conjunction or combination or connection with the defendants, John V. Farwell & Co.; and the said defendants, John V. Farwell & Co., caused the said judgment in their favor to be entered and execution to be issued thereon and levied as aforesaid of their own accord, and not in any way in conjunction or combination or connection with these defendants; that the execution of these defendants was first levied and before the one of John V. Farwell & Co. Wherefore these defendants submit that there is a misjoinder of parties defendant in this action, and insist thereon in abatement of this action, inasmuch as these defendants are not jointly concerned in this matter or jointly liable therein with the said John V. Farwell & Co., and so are improperly joined with them as defendants therein.

And these defendants, further answering, admit that on the 29th day of September, A. D. 1881, the said plaintiff made a voluntary assignment of all his property to one John M. Holley for the benefit of all his creditors, but they allege that the said assignment was not made necessary or caused by any act or acts of these defendants, or either of them, but was necessitated and caused solely by the insolvent and failing condition of the said Marcus Anderson.

And these defendants, further answering, allege that the said plaintiff, Marcus Anderson, after the levy of said executions issued September 28, A. D. 1881, made separate motions in the cir-
60 cuit court for La Crosse county to set aside each of said judgments and executions and to vacate all proceedings thereunder, which said motions were, on or about the 18th day of October, A. D. 1881, duly denied; that afterwards, and on or about the day last aforesaid, the said John M. Holley, assignee of the said Marus Anderson, for the benefit of his creditors under the assignment aforesaid, duly made and presented to the circuit court for La Crosse county his petition in the matter of said assignment duly verified, consented to in writing by the said Marcus Anderson, and which was supported by an affidavit of the said Anderson made on that day, in and by which the said John M. Holley, assignee, and the said Marcus Anderson set forth the said judgments of the defendants and of John V. Farwell & Co., so entered as aforesaid, and the fact of the issuing of said executions and levies thereunder as aforesaid, and the possession by the sheriff of La Crosse county of the assigned property thereunder, representing that the clains therein mentioned were valid claims against said property, and prior to the rights of other creditors at large of said Marcus Anderson under said assignment, and asked that an order be made by the court allowing

the said assignee to settle, compound, and compromise or pay off, as should seem best, the said execution claims, and said petition was consented to by a number of the creditors of the said Marcus Anderson; which consent was procured by the said Anderson in order that the prayer of said petition might be granted; that afterwards, and on the 19th day of October, A. D. 1881, the said circuit court duly made an order in substance as prayed for in and by said petition; that
61 afterwards, and on the 24th day of October, A. D. 1881, the said Marcus Anderson duly settled and compromised the said matter in difference herein, and the matters then in litigation, including the said judgments and executions, and all rights thereunder, and all claims and demands arising or growing out of the same as follows, to wit: These defendants and the said John V. Farwell & Co. agreed to receive in satisfaction of their said judgments and levies, and in consideration of the release and surrender of the same and of said property, the notes of the said John M. Holley, guaranteed by one C. B. Solberg, for the amount of which the said levies were so made; that the said Marcus Anderson procured said assignee to give, and the said Solberg to endorse, notes to these defendants and to said John V. Farwell & Co. for the agreed amount, and voluntarily paid or caused to be paid to the sheriff of La Crosse county the costs of said levies, and which had been made under said executions, and voluntarily delivered or caused said assignee to deliver said notes for the purposes aforesaid, agreeing *that* the consideration that these defendants and the said John V. Farwell & Co. would accept the same and satisfy and discharge said judgments, executions, and levies, the said several matters aforesaid, and all claims and demands on account of or growing out of said levies and seizure of property under said executions, as well as said judgments, executions, and levies, should be held and considered satisfied; whereupon these defendants and the said John V. Farwell & Co., by their said attorneys, accepted said notes for the amount of said judgments
62 and executions, payable one-half in sixty and the other half in ninety days thereafter, and satisfied said judgments, and at the request of said Marcus Anderson surrendered and turned over the whole of the property seized under said executions to the said John M. Holley, as such assignee, for the benefit of his creditors and for the benefit of the said Marcus Anderson as well, to be applied, and the same was in fact thereafter applied, by the said assignee in payment of the other debts of the said Marcus Anderson, all of which was done at his instance and request and with his consent; that both of said notes so given to these defendants were fully paid, and they insist on all and singular the matters and things aforesaid in bar of the plaintiff's action, or in reduction in the amount of his claim, should he establish any against them at the trial.

Wherefore these defendants demand judgment dismissing the plaintiff's complaint, and for their costs.

C. L. HOOD,
Att'y for Def'ts, John Sloane & Co.

STATE OF WISCONSIN, } ss:
La Crosse County, }

C. L. Hood, being duly sworn, says he is one of the attorneys of the defendants who make the foregoing answer and verifies this answer on their behalf; that he knows the contents of the foregoing answer, and the same is true, as he verily believes. He verifies this answer because none of the defendants who make the same reside in the county of La Crosse, where deponent resides, and the grounds of his belief are the documents and papers referred to in the
63 answer and statements of said defendants' agents to him.

C. L. HOOD.

Subsribed and sworn to before me this 15th day of May, 1885.

T. A. DYSON,
Notary Public, La Crosse, Wis.

64 [Endorsed:] State of Wisconsin, La Crosse circuit court. Marcus Anderson *vs.* John Sloane *et al.*, impleaded, &c. Answer. Due service of copy of within answer submitted this 10th day of May, 1885. M. P. Wing & G. C. Prentiss, plaintiff's attorneys. Filed May 15th, 1885. Chas. Kurtenacker, clerk of court.

65 STATE OF WISCONSIN:

Circuit Court for La Crosse County.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN V. FARWELL, CHARLES B. FARWELL, WILLIAM D. FARWELL, and John K. Harmon, Copartners, impleaded with John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, Copartners, and Angus Cameron, Joseph W. Losey, Charles W. Bunn, and Curtis H. Remy, Defendants.

The above-named defendants, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, for answer to the plaintiff's complaint in this action, admit that at the time charged in said complaint they were copartners, doing business under the firm name and style of John V. Farwell & Co., and they deny each and every other allegation, matter, and thing in said complaint stated, except as hereinafter specially admitted.

And these defendants, further answering, admit that the said John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson were copartners, as charged in said complaint, under the firm name and style of W. & J. Sloane, and that the defendants, Angus Cameron, Joseph W. Losey, and Charles W. Bunn, were, at the time charged in said complaint, copartners in the practice of the law at La
66 Crosse, Wisconsin, under the firm name and style of Cameron, Losey & Bunn, and that the defendant, Curtis H. Remy, at the time mentioned in said complaint, was an attorney-at-law,

and in all that he did in the name and on the behalf of said defendants, W. & J. Sloane, he acted as and was their duly-authorized attorney, and that they afterwards ratified and approved all that he did in their name and behalf in relation to the matters stated in said complaint; and, in like manner, admit that the defendants, Cameron, Losey & Bunn, in all that they did in relation to the matters charged in said complaint, in the name and on behalf of the defendants, W. & J. Sloane, acted as and were the duly-authorized attorneys of said defendants, and that said defendants, W. & J. Sloane, afterwards ratified and approved all that they did in their name and behalf in relation to the matters stated in said complaint.

And these defendants, further answering, admit and allege that on the 28th day of September, A. D. 1881, the said plaintiff was indebted to the said firm of W. & J. Sloane in the sum of three thousand four hundred and two dollars and ninety cents, no part of which was past due except the sum of six hundred and sixty-three dollars and three cents, and accrued interest thereon, and they admit that on that day the defendants, Cameron, Losey & Bunn and Curtis H. Remy, as their attorneys and acting in their behalf and under their authority, procured and caused to be entered by confession, without action, a judgment in the circuit court for La Crosse county in favor of the said W. & J. Sloane against
67 the said plaintiff for the full sum of their said debt with costs, as stated in said complaint, which said judgment was signed by John J. Cole, court commissioner, and was docketed and recorded in the office of the clerk of the circuit court for La Crosse county, and they allege, on information and belief, that at the time of the entry and docketing of said judgment in said court the said circuit court had lawful jurisdiction of the subject-matter of said proceeding and of the person of the said Marcus Anderson; and, upon information and belief, they admit that on the day and year last aforesaid the plaintiff was indebted to these defendants, and allege that it was in the sum of one thousand seven hundred and sixty-eight dollars and thirty-eight cents, no part of which was due except the sum of four hundred and thirty-nine dollars and twenty-seven cents; and they admit, on information and belief, that on the 28th day of September, A. D. 1881, these defendants procured and caused to be entered on confession, without action, a judgment in favor of these defendants against the said plaintiff for the full sum of their debt, with costs, as stated in the said complaint, which said judgment was signed by said John J. Cole, court commissioner, and was duly docketed and recorded in the office of the clerk of the circuit court for La Crosse county; and, on information and belief, they allege that at the time of the entry and docketing of said last-mentioned judgment in said court the said circuit court for La Crosse county
68 had lawful jurisdiction of the subject-matter of said proceeding and of the person of the said Marcus Anderson, the plaintiff in this suit; and they admit in like manner that the defendants, Cameron, Losey & Bunn, were and acted as the attorneys for the defendants in the entry of said judgment; and these defendants, on information and belief, admit that afterwards, and on or about the

28th day of September aforesaid, their said attorneys, acting under their authority, caused to be issued and delivered to the sheriff of La Crosse county an execution upon their said judgment so entered and docketed, as aforesaid, and that said execution was regular in form and fair on its face, and that on or about the day last aforesaid the said attorney for the said W. & J. Sloane, acting under authority from them, and not otherwise, caused to be issued and delivered to the sheriff of La Crosse county an execution upon the judgment so so entered and docketed, as aforesaid, in favor of the said W. & J. Sloane against said Marcus Anderson for the full amount of the damages and costs, as aforesaid, and that said execution was regular and fair on its face; that on the day and year last aforesaid the said sheriff of La Crosse county, acting under the direction of the plaintiffs in said executions separately, through their attorneys, respectively, seized and took possession of the stock of goods, fixtures, and furniture in the store of the plaintiff; and these defendants admit that afterward, and before the announcement of this action, the said judgments and executions were set aside by orders of the circuit court for La Crosse county, as alleged in said complaint, and
69 before the commencement of this action the plaintiff herein demanded of the said Cameron, Losey & Bunn the sum of five thousand eight hundred and eighty-three dollars and twenty-three cents, and that they refused to pay the same.

And these defendants, further answering, allege that attached to the complaints and judgment rolls in said proceedings in the circuit court for La Crosse county, in the entry of said judgments, are due and proper affidavits of the amount due and to become due in each of said cases, upon the claim therein, as required by law, and admitting that the said judgments were entered for the whole amount due and to become due in each case respectfully; and they allege that the entry of each of said judgments was fully authorized by the warrant of attorney attached to respective judgment rolls; and on information and belief they allege that said judgments were, and each of them was, regular and valid, and that the said court commissioner had full jurisdiction and authority to sign the same.

And these defendants, further answering, allege that at the time of the entry of said judgments and the levy of said several executions the said plaintiff was not a prosperous merchant; that though he had been engaged in business in said city of La Crosse for many years he had failed two or three times in the same business in which he was engaged; that at the time in question his credit had become greatly impaired and was poor, and that his creditors were pressing him for payments which he could not make when and as they
70 became due, and that his failure was inevitable and a foregone conclusion, even had not these defendants and the said W. & J. Sloane entered their respective judgments and issued executions thereon, and levied the same, respectively, on his property, as herein stated; that shortly before the levy thereof, and on the 26th day of the same month, judgment by confession was entered in the circuit court for La Crosse county in favor of O. R. Keith & Co. against the said plaintiff, Marcus Anderson, for the sum of one thou-

sand one hundred and thirty-seven dollars and four cents, upon which execution was issued and levied upon the same property seized upon the executions hereinbefore mentioned about three days before the said levies upon and seizures thereof, hereinbefore first stated, and that the failure of said plaintiff was precipitated and made inevitable by the said levy so made on his property under and by virtue of the said execution and judgment of the said O. R. Keith & Co.; that the said levies upon and seizure of the said plaintiffs under and by virtue of the execution of these defendants, and under and by virtue of the execution in favor of the said W. & J. Sloane, were made in good faith and for the sole purpose of securing the payment of the sums of money mentioned therein then due and owing to them respectively, and which, owing to the insolvent condition of the said Marcus Anderson, they were then in great peril of losing.

71 And these defendants, further answering, allege that they were not jointly concerned with the said W. & J. Sloane in the entry of said judgments, or the issue or levying of the said executions, nor were their said executions delivered to the said sheriff or levied at the same time; that these defendants caused the judgment in their favor to be issued thereon and levied of their own accord, and not in conjunction, combination, or connection with the defendants, W. & J. Sloan; and that the said defendants, W. & J. Sloane, caused the said judgment in their favor to be entered and execution to be issued thereon and levied as aforesaid of their own accord, and not in any way in conjunction or combination on connection with these defendants; that the execution of these defendants was last levied and after the one of W. & J. Sloane; wherefore these defendants submit that there is a misjoinder of parties defendant in this action, and insist thereon in abatement of this action, inasmuch as these defendants are not jointly concerned in this matter or jointly liable therein with the said W. & J. Sloane, and so are improperly joined with them as defendants therein.

And these defendants, further answering, admit that on the 29th day of September, A. D. 1881, the said plaintiff made a voluntary assignment of all his property to one John M. Holley for the benefit of all his creditors, but they allege that the said assignment was not made necessary, or caused by any act or acts of these defendants, or any or either of them; but was necessitated and caused solely

72 by the insolvent and failing condition of the said Marcus Anderson.

And these defendants, further answering, allege that the said plaintiff, Marcus Anderson, after the levy of said executions, issued September 28th, 1881, made separate motions in the circuit court for La Crosse county to set aside each of said judgments and executions, and to vacate all proceedings thereunder, which said motions were on or about the 18th day of October, 1881, duly denied; that afterwards, and on or about the day last aforesaid, the said John M. Holley, assignee of the said Marcus Anderson, for the benefit of his creditors under the assignment aforesaid, duly made and presented to the circuit court for La Crosse county his petition in the matters of said assignment, duly verified, consented to in writing by the said

Marcus Anderson, and which was supported by an affidavit of the said Anderson, made on that day, in and by which the said John M. Holley, assignee, and the said Marcus Anderson set forth the said judgments of these defendants and of W. & J. Sloane, so entered as aforesaid, and the fact of the issuing of said executions and levies thereunder as aforesaid and the possession by the sheriff of La Crosse county of the assigned property thereunder representing that the claims therein mentioned were valid claims against said property, and prior to the rights of other creditors at large of said Marcus Anderson under said assignment, and asked that an order be made by the court allowing the said assignee to settle, compound, and
73 compromise, or pay off, as should seem best, the said execution claims, and said petition was consented to by a number of the creditors of the said Marcus Anderson, which consent was procured by the said Anderson in order that the prayer of said petition might be granted; that afterwards, and on the 19th day of October, A. D. 1881, the said circuit court duly made an order in substance as prayed for by said petition; that afterwards, and on the 24th day of October, 1881, the said Marcus Anderson duly settled and compromised the said matters then in litigation, including the said judgments and executions and all rights thereunder, and all claims and demands arising or growing out of the same, as follows, to wit: These defendants and the said W. & J. Sloane agreed to receive in satisfaction of their said judgments and levies, and in consideration of the release and surrender of the same and of said property, the notes of the said John M. Holley, guaranteed by one C. B. Solberg, for the amount for which the said levies were so made; that the said Marcus Anderson procured said assignee to give and the said Solberg to endorse notes to these defendants and to said W. & J. Sloane for the agreed amount, and voluntarily paid or caused to be paid to the sheriff of La Crosse county the costs of said levies, and which had been made under said executions, and voluntarily delivered or caused said assignee to deliver said notes for the purpose aforesaid, agreeing *that* the consideration that these defendants and the said W. & J. Sloane would accept the
74 same, and satisfy and discharge the said judgments, executions, and levies, the said several matters aforesaid, and all claims and demands on account of or growing out of said levies, and seizure of property under said executions, as well as said judgments, executions, and levies, should be held and considered satisfied; wherefore the defendants and the said W. & J. Sloane, by their said attorneys, accepted said notes for the amount of said judgments and executions, payable one-half in sixty and one-half in ninety days thereafter, and satisfied said judgments, and at the request of said Marcus Anderson surrendered and turned over the whole of the property seized under said executions to the said John M. Holley as said assignee, for the benefit of his creditors and for the benefit of the said Marcus Anderson as well, to be applied, and the same was thereafter in fact applied, by the said assignee in payment of the other debts of the said Marcus Anderson, all of which was done at his instance and request, and with his consent.

and Angus Cameron, and have known them, and each of them, for seven years and more last past. I do not know the other defendants personally.

Fifth direct interrogatory. Do you know M. P. Wing & G. C. Prentiss, the plaintiff's attorneys in this case; and, if so, how long have you known them and each of them?

Answer to fifth direct interrogatory. I know M. P. Wing &
81 G. C. Prentiss, the plaintiff's attorneys in this case, and have known them, and each of them, for seven years and more last past.

Sixth direct interrogatory. State whether you remember anything—and, if yes, what—concerning the entering of a judgment in the circuit court of La Crosse county on or about the 28th day of September, 1881, in favor of John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, as plaintiffs, and against Marcus Anderson, as defendant; and do you remember anything—and, if yes, what—concerning the entry of a judgment in the circuit court of La Crosse county in September, 1881, in favor of John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, as plaintiffs, against Marcus Anderson, as defendants?

Answer to sixth direct interrogatory. I remember that during the latter part of September, 1881, judgment or *cognovit* was entered in the circuit court of La Crosse county, Wisconsin, in favor of John Sloane, William D. Sloane, and others, the defendants in this case, as plaintiffs, against Marcus Anderson, the plaintiff in this case, as defendant, for the sum of about $3,400.00 or $3,500.00 and costs. The judgment was signed by John J. Cole, court commissioner; I was present at the time the judgment was signed; I remember that on the same day a like judgment — *cognovit* was entered in the same court in favor of John V. Farwell, William D. Farwell, and others, the defendants in this case, as plaintiffs, against Marcus Anderson, the plaintiff in this case, as defend-
82 ant, for the sum of about $1,700.00 and costs. This judgment was also signed by John J. Cole, court commissioner; I was present at the time it was signed.

Seventh direct interrogatory. State what you recollect, if anything, concerning the issue of executions on said judgments, a levy on property, and a motion made to set aside the executions.

Answer to seventh direct interrogatory. Executions were issued on both these judgments on the date of their entry, or within a very short time afterwards—I think it was on the date of entry—to Mark M. Buttles, then sheriff of La Cross county, Wisconsin, who thereupon levied upon the goods and stock of Marcus Anderson, in his store at La Crosse, Wisconsin. A motion was made by Messrs. M. P. Wing and G. C. Prestiss, the attorneys of Marcus Anderson, to the court to have these executions and there levies made thereunder set aside, on the ground of irregularity in the entry of the judgments, and because the notes upon which the judgments were entered were due only in part.

Eighth direct interrogatory. State, if you know, the result of these

motions, which you say were made to set the executions in each of these actions aside, and the levy made.

Answer to the eight direct interrogatory. These motions were both overruled by the court.

Ninth direct interrogatory. Did you at any time hear any conversation between any member of the firm of Cameron, Losey & Bunn and the defendant, Marcus Anderson, or any conversation by
83 either member of the firm of Cameron, Losey & Bunn in the presence of said Marcus Anderson, with his counsel, M. P. Wing, in regard to a settlement of the judgments in the case of Sloane and others against Anderson, and the case of Farwell & others against Anderson; if yes, where and when did it occur; what was the conversations? State the conversations fully.

Answer to ninth direct interrogatory: I heard conversations that Mr. Losey, the defendant, had with Marcus Anderson, the plaintiff, and his counsel, Mr. M. P. Wing, and conversations that Mr. Bunn had with the same parties, and also conversations between Mr. Losey, Mr. Bunn, Mr. Wing, & Mr. Anderson relative to the settlement of the judgments in the cases of Sloane and others against Anderson and Farwell & others against Anderson. These conversations occurred during the months of September and October, 1881, at the law office of Cameron, Losey & Bunn, the defendants in this case, at La Crosse, La Crosse county, Wisconsin, and after the levy before referred to was made. The first conversation I recollect of hearing was between Mr. Losey, Mr. Wing, and Mr. Anderson. Mr. Losey said that if the decision of the circuit court on the judgments or the executions and levies was against his clients he wanted the matter to stand in abeyance till the supreme court could decide the question, and he wanted the levy to stand until that time. Mr. Wing said if he was beaten in the circuit court he would settle the matter and pay up, providing the court would grant leave for the assignee to make it out of the stock. Mr. Anderson was present, but said nothing, or but very little. He did not object to anything
84 Mr. Wing said. The matter was decided adverse to Anderson by the court. After this decision, and before the day fixed for the sale, Mr. Losey, Mr. Wing, and Mr. Anderson had another conversation in my hearing. Mr. Wing said he wanted an extension of time to settle; Mr. Losey made this proposition to them, that if they would waive all the errors in the judgments, executions, and levies in the cases, and would give notes signed by J. M. Holley, as assignee, & endorsed by Chas. B. Solberg, and would consider the matter as settled, and not litigate the matter further, by appeal or otherwise, that Cameron, Losey & Bunn, in behalf of their clients, would grant an extension. I do not recollect how long an extension Mr. Losey proposed giving, but it was not to exceed three months, I think. Mr. Wing hesitated about accepting the proposition a good deal, and wanted Mr. Losey to make another proposition. Mr. Losey said: "That is the only proposition of settlement we will make. We will not settle on any other terms whatever." Mr. Wing hesitated somewhat and finally left the office, saying he thought they would consent to it. Mr. Anderson was present at this conversation.

I do not remember of his saying much, if anything. He did not object to any arrangement or terms made by his attorney, Mr. M. P. Wing. On the same day, or within a day or two thereafter, Mr. Wing came to Cameron, Losey & Bunn's office and went into a room where Mr. Bunn was. I do not know whether Anderson was present at that time or not. Mr. Wing and Mr. Bunn had a conversation of some kind, but I was in the next room & could not hear what was said. Mr. Wing stayed in the room with Mr. Bunn
85 some little time. When he came out he passed through the room where Mr. Losey and I were. As he came into the room Mr. Losey said: "Have you settled?" Mr. Wing replied, "Yes." Mr. Losey asked, "On the basis we talked?" Mr. Wing said, "Yes," and left the office. This last conversation was had a few days before the date fixed for sale. This is as fully as I can recollect these conversations with the exception that Mr. Losey repeatedly and always told Mr. Wing, in Anderson's presence, that he would settle only upon consideration that all errors in the judgments, executions, and levies were released. He never, to my knowledge, made any other proposition.

Tenth direct interrogatory: Do you expect to remain in Washington Territory?

Answer to tenth direct interrogatory: I expect to remain permanently in Washington Territory.

CHARLES E. ALTER.

I hereby certify to the correctness of the foregoing deposition, which was subscribed & sworn to before me this 10th day of October, 1884.

[NOTARIAL SEAL.] RICHARD OSBORNE,
Notary Public in and for King County,
Washington Territory

86 TERRITORY OF WASHINGTON, }
County of King, } *ss:*

I, Richard Osborne, notary public in and for said county, do hereby certify that the above deposition was taken before me, at my office, in the city of Seattle, in said county, on the 10th day of October, 1884, at ten o'clock in the forenoon; that it was taken at the request of the defendants, Angus Cameron, Joseph W. Losey, & Charles W. Bunn, upon verbal interrogatories; that it was reduced to writing by deponent in my presence and under my direction; that it was taken to be used in the action of Marcus Anderson, plaintiff, against John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, copartners; John V. Farwell, William D. Farwell, Charles B. Farwell, John K. Harmon, copartners; Angus Cameron, Joseph W. Losey, and Charles W. Bunn, copartners, and Curtis H. Remy, defendants, now pending in the circuit court of La Crosse county, Wisconsin, and that the reason for taking it was that said, Charles E. Alter is a resident of and now within said Washington Territory, and not of the State of Wisconsin; that C. F. L. Kellogg, Esq., attended at the taking of

such deposition as counsel for the defendants, Angus Cameron, Joseph W. Losey, & Charles W. Bunn; that there was no other or contra appearance; that a notice, of which the annexed is a copy, was served upon Messrs. M. P. Wing & G. C. Prentiss, the plaintiff's attorneys in this case, on the 27th day of August, 1884; that said deponent, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth relative to said
87 cause, and that said deposition was carefully read by said deponent, and — then subscribed the same.

Witness my hand and official seal this 10th day of October, A. D. 1884.

[NOTARIAL SEAL.] RICHARD OSBORNE,
Notary Public in and for King County, Washington Territory.

Fees of notary	$10 00
Witness fees of C. E. Alter	2 20
	$12 20
Fees [of] clerk	1 00
	$13 20

88 TERRITORY OF WASHINGTON, } *ss:*
County of King, }

I, James Seavey, clerk of the district court of the third judicial district of Washington Territory, do hereby certify that Richard Osborne, the person subscribing the annexed deposition of Charles E. Alter, and before whom the same was taken, was, at the date thereof, and is now, a notary public in and for the said King county, duly appointed and commissioned; that by virtue of his said office he is authorized to take acknowledgments and administer oaths. I do further certify that I am acquainted with the handwriting of said Richard Osborne, and verily believe the name subscribed to the said annexed instrument is his proper and genuine signature; and further, that the foregoing instrument and his attestations thereto are in due form, according to the laws of Washington Territory.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this eleventh day of October, A. D. 1884.

[Seal U. S. District Court, King County, Third Jud'l District, W. T.]

JAMES SEAVEY, *Clerk*,
By JAMES P. LUDLOW,
Deputy Clerk.

Fee, $1. Paid.

89 [Endorsed:] Circuit court, La Crosse county. Marcus Anderson *vs.* John Sloane *et al.* Deposition of C. E. Alter. Filed Oct. 20, 1884. Chas. Kurtenacker, clerk of court.

90 Circuit Court, La Crosse County.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN SLOANE and others, Defendants.

Upon the 18th day of May, 1885, at a general term of court held in and for the county of La Crosse, at the court-house in the city of La Crosse, commencing on the 11th day of May, A. D. 1885.

Upon the complaint and answer herein and the annexed petition for removal of this cause to the circuit court of the United States, upon motion of C. L. Hood, the annexed bond having been presented to the court with said petition for removal—

It is ordered that the plaintiff show cause before this court, at the court-house in the city and county of La Crosse aforesaid, upon the 18th day of May, A. D. 1885, at the hour of four o'clock p. m., why the court should not accept said bond and sureties and proceed no further in the case, and that a copy of this order, with said petition and bond, be served on M. P. Wing & G. C. Prentiss at least one hour before the return of said order.

By the court:

A. W. NEWMAN,
Circuit Judge.

91 STATE OF WISCONSIN:

Circuit Court for La Crosse County.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN V. FARWELL, CHARLES B. FARWELL, WILLIAM D. FARWELL, John K. Harmon, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, Angus Cameron, Joseph W. Losey, Charles W. Bunn, and Curtis H. Remy, Defendants.

The petition of John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, eleven of the above-named defendants, respectfully shows to the court:

That the action above entitled was commenced against your petitioners by process of garnishment against their debtors in the State of Wisconsin on the 24th day of April, A. D. 1885, and that they have since then appeared therein, and that said cause is now pending in this court and has not been tried, and that no term of said court has been held since the said action was so commenced at which said action could be tried.

That at the time said action was commenced and at the present time the said plaintiff, Marcus Anderson, was and is a citizen
92 of the State of Wisconsin, residing at the city of La Crosse, in said State, and that your petitioners, the defendants, John

Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, then were and now are citizens of the State of New York, residing in the city and State of New York, and that your petitioners, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, then were and now are citizens of the State of Illinois, residing in the city of Chicago, in said State; that their codefendants in this action, Angus Cameron, Joseph W. Losey, and Charles W. Bunn, then were and now are citizens of the State of Wisconsin, residing at the city of La Crosse, in said State, and that Curtis H. Remy, one of the defendants in said action, then was and now is a citizen of the State of Illinois, residing at the city of Chicago, in said State, but has not been served with the summons in this action, nor has he appeared therein.

That the matters in dispute in this action, and for which said suit was brought, exceed the sum of five thousand dollars, exclusive of costs.

That there exists in said suit a controversy which is wholly between citizens of different States, to wit, between the said plaintiff, a citizen of Wisconsin, and your petitioners, citizens of the States of New York and Illinois aforesaid, and which can be fully determined as between them; that the controversy in this action, and which is stated in the pleadings on file therein, is a separable one, and can be fully
93 tried and determined between the said plaintiff and your petitioners without the presence of their said codefendants above named, or any or either of them.

And the said petitioners, defendants as aforesaid, hereby offer Mons. Anderson and A. H. Anderson, of the city of La Crosse, State of Wisconsin, as sureties for their entering in the circuit court of the United States for the western district of Wisconsin, in which district said suit is now pending, on the first day of the next session of said court, or before, a copy of the record in said court, and for paying all costs that may be awarded by said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and also for their complying in all respects with the provisions in the premises of the act of the Congress of the United States passed March 3rd, A. D. 1875, entitled "An act to determine the jurisdiction of the circuit court of the United States and to regulate the removal of causes from State courts, and for other purposes."

Wherefore your petitioners pray this honorable court that said case be removed into the circuit court of the United States for the western district of Wisconsin, and that this court proceed no further with said suit.

C. L. HOOD,

Attorney for John V. Farwell, Charles B. Farwell, W. D. Farwell, John K. Harmon, John Sloane, W. D. Sloane, H. F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, & Charles L. Watson, Def'ts.

94 STATE OF WISCONSIN, } ss:
La Crosse County, }

C. L. Hood, of the city of La Crosse, in said county and State, being duly sworn, says that he is the attorney of the petitioners named in the foregoing petition, and makes his affidavit of verification in their behalf for the reason that they each and all reside without this State, and that they are not, nor is either of them, now within this State, to the knowledge or belief of this deponent; that he has heard read the foregoing petition by him subscribed for and on behalf of said petitioners, and that the same is true in substance and matter of fact.

C. L. HOOD.

Subscribed and sworn to before me May 18th, A. D. 1885.

THOMAS A. DYSON,
Notary Public, La Crosse Co., Wis.

95 STATE OF WISCONSIN:

Circuit Court for La Crosse County.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN V. FARWELL, CHARLES B. FARWELL, WILLIAM D. FARWELL, John K. Harmon, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, Angus Cameron, Joseph W. Losey, Charles W. Bunn, and Curtis H. Remy, Defendants.

Know all men by these presents that we, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, of the city and State of New York, and John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, of the city of Chicago, in the State of Illinois, as principals, and Mons. Anderson and A. H. Anderson, of the city of La Crosse and State of Wisconsin, as sureties, are held and firmly bound unto Marcus Anderson in the penal sum of five hundred dollars, to the payment of which sum we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Given under our hands this 18th day of May, A. D. 1885.

The conditions of this obligation are these: The said John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon have applied to the circuit court of Wisconsin for La Crosse county to remove a certain cause pending in said court, wherein one Marcus Anderson is plaintiff and the said John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon, and others are defendants, from the said circuit court to the circuit court of the United States for the western district of Wisconsin.

96

Now, if the said John Sloane, William V. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon shall enter in the circuit court of the United States for the western district of Wisconsin, on the first day of the next term thereof, a copy of the record of said suit, and shall pay all costs that may accrue or be awarded by said circuit court if it shall hold that said suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in said suit if special bail was originally required therein, then this obligation shall be void; otherwise in full force.

JOHN V. FARWELL, [SEAL.]
CHARLES B. FARWELL, [SEAL.]
WILLIAM D. FARWELL, [SEAL.]
JOHN K. HARMON, [SEAL.]
JOHN SLOANE, [SEAL.]
WILLIAM D. SLOANE, [SEAL.]
HENRY F. SLOANE, [SEAL.]
97 THOMAS C. SLOANE, [SEAL.]
WALTER W. LAW, [SEAL.]
ALEXANDER WRIGHT, [SEAL.]
CHARLES L. WATSON, [SEAL.]
All by C. L. HOOD, *Their Attorney.*
MONS. ANDERSON, [SEAL.]
A. H. ANDERSON, [SEAL.]
Sureties.

STATE OF WISCONSIN, } ss:
La Crosse County, }

Mons. Anderson and A. H. Anderson, being each duly sworn, say that they are each of them worth more than the sum of five hundred dollars in property within the State of Wisconsin not by law exempt from execution, and that they are each residents and freeholders in said State.

MONS. ANDERSON.
A. H. ANDERSON.

Subscribed and sworn to before me May 18th, A. D. 1885.
THOMAS A. DYSON,
Notary Public, La Crosse Co., Wis.

98 [Endorsed:] Circuit court, La Crosse county. Marcus Anderson *vs.* John Sloane *et al.* Petition and bond for removal of case. Original. Filed May 18, 1885. J. E. Parker, deputy clerk of court.

99 STATE OF WISCONSIN:

Circuit Court, La Crosse County.

MARCUS ANDERSON, Plaintiff, *vs.* JOHN SLOANE *et al.*, Defendants.

At a general term of the circuit court for La Crosse county, held in the court-house in the city of La Crosse, State of Wisconsin, commencing on the 11th day of May, 1885, the above matter coming on

for hearing upon the order to show cause this — day of May, and hereto annexed, on motion of C. L. Hood, attorney for the defendants, John V. Farwell, Charles B. Farwell, William D. Farwell, John K. Harmon, John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Waton, it is ordered that the bond for removal hereto annexed, signed by Mons. Anderson and A. H. Anderson, as sureties, is hereby accepted and approved.

Dated May 19th, 1885.

By the court:

A. W. NEWMAN,
Circuit Judge.

100 [Endorsed:] Circuit court, La Crosse county. Marcus Anderson *vs.* John Sloane *et al.* Order accepting sureties on bond for removal. Filed May 23, 1885. Chas. Kurtenacker, clerk of court.

101 *Issues of Fact for Jury.*

Circuit Court, La Crosse County, Wis. May Term, 1884.

MARCUS ANDERSON
vs.
JOHN SLOANE, WM. D. SLOANE, HENRY F. SLOANE, THOS. C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, *et al.* } No. 22.

Cameron, Losey & Bunn.
M. P. Wing & G. C. Prentiss.
Issue joined April 30th, 1884.

Remarks by the Judge.

May 13. Continued for defendants, with leave to plaintiff to amend complaint.

102 *Issues of Fact for Jury.*

Circuit Court, La Crosse County, Wis. November Term, 1884.

MARCUS ANDERSON
vs.
JOHN SLOANE, WM. D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, and others. } No. 11.

M. P. Wing & G. C. Prentiss.
Cameron, Losey & Brown.
Issue joined April 30, 1884.

Remarks by the Judge.

Nov. 10. Continued for defendants without costs.

103 *Issues of Fact for Jury.*

Circuit Court, La Crosse County, Wis. May Term, 1885.

MARCUS ANDERSON
vs.
JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOS. C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles P. Farwell, John K. Harmon, Angus Cameron, Joseph W. Losey, Charles W. Bunn, and Curtis H. Remy. } No. 12.

M. P. Wing & G. C. Prentiss.
C. L. Hood for C., L. & B.
Cameron, Losey & Brown.
Issue joined April 30th, 1884.

Remarks by the Judge.

May 11. Continued by consent.

104 [Endorsed:] Circuit court, La Crosse Co., Wis. Marcus Anderson *vs.* John Sloane *et al.* Minutes of court calendar.

105 Circuit Court, La Crosse Co., Wis.

MARCUS ANDERSON *vs.* JOHN SLOANE *et al.*

MAY 13TH, 1884.

Continued on application of defendants. Leave granted to plaintiffs to amend complaint.

Circuit Court, La Crosse Co., Wis.

MARCUS ANDERSON *vs.* JOHN SLOANE *et al.*

NOVEMBER 10TH, A. D. 1884.

Continued on application of def'ts, as a second continuance, without costs.

Circuit Court, La Crosse Co., Wis.

MARCUS ANDERSON *vs.* JOHN SLOANE *et al.*

MAY 11TH, A. D. 1885.

Continued by consent.

Circuit Court, La Crosse Co., Wis.

MARCUS ANDERSON *vs.* JOHN SLOANE *et al.*

MAY 18TH, A. D. 1885.

Order to show cause.

106 [Endorsed:] Circuit court, La Crosse Co., Wis. Marcus Anderson *vs.* John Sloane *et al.* Minutes of the clerk of circuit court.

107 STATE OF WISCONSIN, } ss:
County of La Crosse, }

I, Charles Kurtenacker, clerk of the circuit court for the county and State aforesaid, do hereby certify that I have compared the foregoing and annexed papers with the original papers entered in the action therein entitled; that it is a correct transcript therefrom and the whole thereof as the same remains of record in my office, and that this transcript is hereby transmitted to the United States circuit court for the western district of Wisconsin, pursuant to the order of removal, dated May 19th, 1885.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 25th day of May, A. D. 1885.

CHARLES KURTENACKER, *Clerk.*

108 [Endorsed:] Law. No. 105. B. U. S. circuit court, west. dist. of Wis. Marcus Anderson *vs.* John Sloane *et al.* Record. Filed June 1st, 1885. F. M. Stewart, cl'k.

109 And on the same day, to wit, the 1st day of June, A. D. 1885, the following proceedings were had, to wit:

Motion to Docket.

MARCUS ANDERSON, Plaintiff,

vs.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, Copartners; John V. Farwell, Charles B. Farwell, William D. Farwell, and John L. Harmon, Copartners, and Angus Cameron, Joseph W. Losey, and Charles W. Bunn, Copartners, and Curtis H. Remy, Defendants.

This day came the defendants herein and filed in this court a transcript of the record and proceedings in this cause in the circuit court of the State of Wisconsin for La Crosse county, and moved that this cause be docketed and proceeded with as provided in the act of Congress of March 3d, 1875, in relation to removal of causes from the State courts, and said motion is postponed for consideration.

And afterwards, to wit, on the third day of said term, being the third day of June, A. D. 1885, in the record of proceedings in said cause appears the following order, to wit:

Order Remanding Cause.

110 MARCUS ANDERSON, Plaintiff,

vs.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, and Charles L. Watson, Copartners; John V. Farwell, Charles B. Farwell, William D. Farwell, and John L. Harmon, Copartners, and Angus Cameron, Joseph W. Losey, and Charles W. Bunn, Copartners, and Curtis H. Remy, Defendants.

And now, at this day, the court being sufficiently advised of and

and concerning its opinion on the motion of the defendants to docket this cause and proceed therein, it is ordered that the said motion be, and the same is hereby, denied, and that this cause be remanded to the circuit court of the State of Wisconsin for La Crosse county, from whence it came, as not properly removable therefrom.

And afterwards, to wit, on the 25th day of June, A. D. 1885, came said defendants and filed security on writ of error as follows, to wit:

Security on Writ of Error.

111 Supreme Court of the United States.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles B. Farwell, William D. Farwell, and K. Harmon, Plaintiffs in Error,

vs.

MARCUS ANDERSON, Defendant in Error.

Know all men by these presents that we, Julius G. O. Zehuter and Philo Dunning, of the city of Madison, in the State of Wisconsin, are held and firmly bound unto Marcus Anderson, above named, of the county of La Crosse, in said State, in the sum of five hundred dollars, to be payed to the said Marcus Anderson, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 25th day of June, A. D. 1885.

Whereas the above-named John Sloan, and others above named, plaintiffs in error, have prosecuted a writ of error in the Supreme Court of the United States to reverse the order rendered in the suit above entitled by the circuit court of the United States for the western district of Wisconsin, on the third day of June, A. D. 1885, remanding the said suit to the circuit court of Wisconsin for the county of La Crosse, from whence it came:

Now, therefore, the condition of this obligation is such that if the above-named John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles B. Farwell, William D.
112 Farwell, and John K. Harmon shall prosecute their writ of error to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JULIUS G. O. ZEHUTER. [SEAL.]
PHILO DUNNING. [SEAL.]

Sealed and delivered in presence of—
D. K. TENNEY.

UNITED STATES OF AMERICA, } ss:
Western District of Wisconsin, }

Julius G. O. Zehnter and Philo Dunning, of the city of Madison, in said district, being duly sworn, depose and say, and each for himself says that he is worth the sum of five hundred dollars over and above his just debts and liabilities.

JULIUS G. O. ZEHNTER.
PHILO DUNNING.

Taken, subscribed, and sworn to before me this 25th day of June, A. D. 1885.

D. K. TENNEY,
Notary Public, Dane Co., Wis.

I approve the above bond and the sufficiency of the sureties thereto.

ROMANZO BUNN,
District Judge.

[Endorsed:] Supreme Court of the United States. John
113 Sloane *et al.*, pl'ffs in error, *vs.* Marcus Anderson, def't in error. Bond. Filed June 25, 1885. F. M. Stewart, clerk.

111 UNITED STATES OF AMERICA, *ss:*

To Marcus Anderson:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the 25th day in July next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit court and western district of Wisconsin, wherein John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, Alexander Wright, Charles L. Watson, John V. Farwell, Charles B. Farwell, William D. Farwell, and John K. Harmon are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the order in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 25th day of June, A. D. 1885.

ROMANZO BUNN,
District Judge, Western District of Wisconsin, and One of the Judges of said Circuit Court.

STATE OF WISCONSIN, } ss:
La Crosse County, }

Thomas A. Dyson, being first duly sworn, deposes and says that on the twenty-sixth day of June, A. D. 1885, at the city of La Crosse, county of La Crosse, and State of Wisconsin, he duly and person-

ally served the foregoing citation on Marcus Anderson, the above-named defendant in error, by delivering to and leaving with said Marcus Anderson a true and correct copy of said citation; that deponent knows the person so served to be the identical person named and decribed in said ciation as Marcus Anderson, the defendant in error.

THOMAS A. DYSON.

Subscribed and sworn to before me this 26th day of June, 1885.
[Seal Joseph W. Losey, Notary Public, La Crosse, Wis.]

J. W. LOSEY,
Notary Public, La Crosse Co., Wis.

115 [Endorsed:] Supreme Court of the United States. John Sloane *et al.*, pl'ffs in error, *vs.* Marcus Anderson, def't in error. Citation. F.

116 UNITED STATES OF AMERICA, }
Western District of Wisconsin, } *ss:*

I, F. M. Stewart, clerk of the circuit court of the United States for the western district of Wisconsin, do hereby certify that I have compared the above and foregoing with the original record and proceedings, now remaining of record and on file in my office, in the above-entitled cause, and that it is a correct transcript therefrom, and also a true copy of the security on writ of error and the original writ of error and citation.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court, at my office, in the city of Madison, in said district, this 14th day of July, A. D. 1885, and of the Independence of the United States the one hundred and tenth.
[Seal U. S. Circuit Court, Western Dis't of Wisconsin.]

F. M. STEWART, *Clerk.*

Endorsed on cover: W. Wisconsin C. C. U. S. No. 905. John Sloane, William D. Sloane, Henry F. Sloane, Thomas C. Sloane, Walter W. Law, *et al.*, plaintiffs in error, *vs.* Marcus Anderson. Filed August 4th, 1885.

117-275

Office Supreme Court U. S.
FILED
FEB 4 1886
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885. No. 905.

JOHN SLOANE *et al.*, *Plaintiffs in Error.*

vs.

MARCUS ANDERSON, *Defendant in Error.*

ARGUMENT FOR PLAINTIFFS IN ERROR.

J. M. FLOWER,
C. W. BUNN,
Counsel for Plaintiffs in Error.

WEST PUBLISHING CO.'S JOB PRINT, 313 WABASHA ST., SAINT PAUL, MINN.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885. No. 905.

JOHN SLOANE *et al.*, *Plaintiffs in Error.*

vs.

MARCUS ANDERSON, *Defendant in Error.*

ARGUMENT FOR PLAINTIFFS IN ERROR.

STATEMENT.

This is a writ of error, under the removal act of 1875, from an order remanding the cause to the state court.

The defendants W. & J. Sloane are citizens of New York, the defendant Remy (who has not been served with process) a citizen of Illinois, and the defendants John V. Farwell & Co. are citizens of Illinois. The other defendants are citizens of Wisconsin. The plaintiff is a citizen of Wisconsin. The petition to remove the case was made by the defendants John V. Farwell & Co. and W. & J. Sloane. (Record, p. 38.)

The action is brought for a tort. The complaint sets out that W. & J. Sloane, acting through the defendants Remy and Cameron, Losey & Bunn, acting as attorneys, issued and levied an execution upon the stock of goods of the defendant in error under an alleged irregular judgment in favor of W. & J. Sloane and against said Anderson, (Record, pp. 3–5;) that John V. Farwell & Co., acting by the same attorneys, issued and levied an execution upon the same stock under another and distinct judgment, alleged to be irregular, in favor of John V. Farwell & Co. against said Anderson. (Record, pp. 4, 5.)

The complaint alleges no conspiracy or confederation among the defendants.

Service was made on the defendants who were citizens of Wisconsin, and the case as to them continued several times. (Record,

pp. 42, 43.) The last continuance was on May 11, 1885. (Record p. 43.) Service was not effected on the non-resident defendants until nearly a year after the suit was commenced, and the answer of W. & J. Sloane was served on May 10, 1885, (Record, p. 27,) and the answer of John V. Farwell & Co. on May 15, 1885. (Record, p. 32.) No pretense is made that at the May term, 1885, to-wit, May 11th, this cause could have been tried as against the defendants W. & J. Sloane and John V. Farwell & Co.; or that when the petition was filed, any such term had elapsed. The petition was filed at that term, to-wit, on May 18, 1885. (Record, p. 41.)

The defendants Cameron, Losey & Bunn answered separately, as did the defendants W. & J. Sloane and John V. Farwell & Co. (Record, pp. 8, 22, 27.)

The cause was remanded by his Honor Justice Harlan, on the authority of *Pirie* v. *Tvedt*, 5 Sup. Ct. Reporter, p. 1034. (Record, p. 44.)

ASSIGNMENT OF ERRORS.

We assign as error that the court erred in remanding the cause to the state court.

ARGUMENT.

This cause may be distinguished from *Pirie* v. *Tvedt*. In that case it was alleged that "the said defendants confederating together, and with a malicious and unlawful design," etc. In this case no confederacy or conspiracy is claimed, and the defendants are not otherwise connected than by the general allegations necessary to show a joint tort; and it furthermore appears that the resident defendants acted as attorneys at law for the non-residents, who are the sole parties interested and the real defendants.

But inasmuch as the decision in *Pirie* v. *Tvedt* is recent, has not passed into the reports, was not a unanimous decision of the court, and is so far reaching in its results, we make bold to ask the court to review that decision.

It is proper to notice, as preliminary, that if the rule of that case is to be applied to all actions for joint torts, it will overrule the decisions and settled practice in some, at least, of the circuits. See Judge Drummond's opinion, concurred in by Justice Harlan and Judge Blodgett, in *Kerling* v. *Cotzhausen*, 16 Fed. Rep. 705; Judge Nelson's opinion in *Clark* v. *Ry. Co.*, 11 Fed. Rep. 355.

TWO QUESTIONS ARISE:

1. The extent of the judicial power of the United States, under the constitution.

2. Is the case within the limits of that power, and within the terms of the act of 1875?

I.

It is a common misapprehension that the *constitutional grant of judicial power* is not broad enough to include any suit when all the plaintiffs are not citizens of different states from all the defendants. But this misapprehension arises from the implied assumption that the judiciary act of 1789 was as broad as the constitution in this respect. It is not necessary to argue that such an assumption is erroneous.

The provision of the constitution is: "The judicial power shall extend to controversies between citizens of different states."

That by the word "controversies" the constitution meant something different from "cases" is to be inferred from the fact that, after using the word "cases" in certain instances, it uses the word "controversies" in others. The language of the provision is very comprehensive, and the jurisdiction which it confers necessarily includes any and every judicial controversy which may exist between citizens of different states.

But certainly a controversy between citizens of different states is none the less a controversy between citizens of different states because others are also parties to it. Therefore, to confine the federal jurisdiction to cases wherein the controversy is between citizens of different states *exclusively*, is to interpolate into the constitution a word not placed there by those who ordained it, and one which materially limits and controls its express provisions.

One object of this article of the constitution was to allay apprehensions of injustice from state prejudice, and to "form a more perfect union," by holding out to every citizen of the United States the assurance that, in all judicial controversies between himself and a citizen of any other state, his controversy might be tried and determined by an impartial tribunal, and one in reference to which no fear could exist that it would be biased in favor of his adversary by any local prejudices or considerations.

The terms of the grant of judicial power are full, general, and unequivocal, and were made so designedly, in order that the power might be commensurate with every possible exigency. The constitution does not descend to details. It remits to congress the duty to create (with one exception) the necessary federal tribunals; to prescribe under what circumstances and in what mode their jurisdiction shall be exercised; and also to determine from time to time, in view of the condition of the country, under what restrictions it shall be exercised; and whether or not the necessary or unnecessary joinder of other parties shall deprive a citizen of the opportunity to have his controversy with the citizen of another state tried by the national tribunal.

A construction which would forever preclude the possibility of a resort to a federal tribunal in controversies between citizens of different states, simply for the reason that in the same case there was

also a controversy between citizens of the same state, would be in derogation of the terms of this provision of the constitution, and subversive of the purposes which it intended to secure. Such a construction would put it in the power of the plaintiff always to deprive the citizen of another state of the right to a trial of his controversy in the federal tribunal, by merely joining with him as co-defendant a citizen of the plaintiff's state. And thus the power to determine in which tribunal the controversy shall be tried, whether in the local and prejudiced one, or in the federal and impartial one, is forever committed to the very party against whom it was the sole purpose of this constitutional provision to afford protection.

As already said, the language used in other clauses of this judicial article of the constitution confirms the view that the term "controversies," as used in this particular clause, was so employed for a purpose, and in distinction to the word "suit" or "case." A controversy between citizens of different states must exist in the suit,—and, if so, the jurisdiction will attach,—but the suit or case may not be between them exclusively. There may be other parties to it.

The same rule of construction which is applied to this clause must govern the other clauses of this section. They are *in pari materia*. A reference to these clauses will show that the proposed limitation cannot be ingrafted on this article without in effect annulling it.

One clause provides that the judicial power shall extend "to all cases affecting ambassadors, other public ministers, and consuls." Can it be pretended that this jurisdiction can be defeated by joining some one else as a party with an ambassador, public minister, or consul; or because the case may affect some one else than those officers?

Another clause provides that the judicial power shall extend "to all controversies between two or more states." Can this jurisdiction be defeated by joining as a party defendant a private person or corporation?

Another clause provides that "the judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

Does the jurisdiction cease to exist in a case because other questions are involved in it than those arising under the constitution, laws, or treaties of the United States? It was settled in *Osborne* v. *Bank of the United States*, 9 Wheaton, 738, that the jurisdiction did not cease to exist in such a case. The question there was whether the act of congress, so far as it authorized the bank (created by a law of the United States) to sue in any circuit court of the United States, was constitutional. The defendant contended that it was not, and that the suit in question was not a "suit" or "case" within the meaning of the constitution or of the act of congress, because several questions might arise in it which would depend on the general principles of the law, and not on any act of congress. In other words, it was there attempted, as it is now attempted by the defendants in error,

to add to this clause of the constitution, the word "exclusively." But what said Marshall, C. J.?

"If this were sufficient to withdraw a case from the jurisdiction of the federal courts, almost every case, although involving the construction of a law, would be withdrawn; and a clause in the constitution relating to a subject of vital importance to the government, and expressed in the most comprehensive terms, would be construed to mean almost nothing. * * * If the existence of other questions be sufficient to arrest the jurisdiction of the court, words which seem intended to be as extensive as the constitution, laws, and treaties of the Union, which seem designed to give the courts of the government the construction of all its acts, so far as they affect the rights of individuals, would be reduced to almost nothing."

This decision applies to the provision now under discussion, and furnishes the true rule for its construction. The cases are parallel. The federal jurisdiction is made by the constitution to depend upon one of two things; either the nature of the subject-matter of the controversy, or the character of the parties to the controversy. It extends to every case in which a question arises under its own laws, or in which a controversy exists between citizens of different states. Either one of these conditions confers the jurisdiction, and it cannot be defeated because other questions or other parties are involved in the controversy.

The decisions made upon the eleventh and twelfth sections of the judiciary act of 1789 do not conflict with the views here presented. Those cases all relate to the proper construction of the judiciary act, and not of the clause of the constitution.

The judiciary act industriously employed the word "suit" throughout, in distinction from the broader term "controversy," used in the constitution; and it was also expressly confined to a suit between a citizen of the state where the suit is brought and a citizen of another state.

II.

This case comes within the express language of the constitution and of the removal act of 1875.

The language of that act is as broad as the constitution itself. The last clause of second section gives the right of removal to any one or more of the several plaintiffs or defendants when, in any suit mentioned in the section, "there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them." The same argument which applies to the construction of the constitution applies with redoubled force here. For here congress has used the term "suit" and "controversy" in direct opposition, and has drawn sharply the distinction.

In *Hyde* v. *Ruble*, 104 U. S. 407, the chief justice clearly and tersely states the construction of this section, settled in *Barney* v. *Latham*, 103 U. S. 205, as follows:

"To entitle a party to removal under this clause there must exist in the suit a separate and distinct cause of action, in respect to which all the necessary parties on one side are citizens of different states from those on the other. Thus, in *Barney* v. *Latham*, two separate and distinct controversies were directly involved: one as to the lands held by the Winona & St. Peter Land Company, in respect to which the land company was the only necessary party on one side, and the plaintiff on the other; and the second, as to the moneys collected from the sales of lands before the land company was formed, as to which only the natural persons named as defendants were the necessary party on the one side, and the plaintiff on the other. One was a controversy about the land, and the other about the money. Separate suits, each distinct in itself, might have been properly brought on these two separate causes of action, and complete relief afforded in such suit as to the particular controversy involved. In that about the land, the land company would have been the only necessary defendant, and in that about the money, the natural persons need only have been brought in. In that about the land, there could not have been a removal because the parties on both sides would have been citizens of the same state; while in that about the money there could have been, as the plaintiffs would all be citizens of one state, while the defendants would all be citizens of another."

It seems to us that this case comes clearly within the language of the second section as that language was construed in *Barney* v. *Latham*.

The act gives the right to remove the case where there is a "controversy" *in the suit*, which "*controversy*" is wholly between citizens of different states, and which can be fully determined *as between them*. It does not require that the whole suit can be determined without the presence of other parties, but only that the particular controversy in the suit which exists wholly between persons having the proper citizenship may be fully determined *as between them*, without the presence of other parties.

Hyde v. *Ruble* settled that an action on joint contract, when only part of the defendants had the necessary citizenship, was not within the act, because it contained but one controversy, which could not be determined without the presence of *all* the defendants.

But in an action against several defendants for a tort there is, within the language of *Barney* v. *Latham* and *Ruble* v. *Hyde*, a separate cause of action in favor of the plaintiff and against *each* defendant, which can be fully tried as between the plaintiff and *each* defendant without the presence of others.

The rule established in *Hyde* v. *Ruble* rests on the doctrine that, to an action on contract, all the joint contractors are *necessary* parties to one and the same cause of action. But joint wrong-doers are not *necessary* parties. The cause of action as to each is separate. Mr. Chitty lays down the correct rule thus: "If several persons jointly commit a tort, the plaintiff, in general, has an election to sue all, or some of the parties jointly, or one of them separately, *because a tort*

is, in its nature, the separate act of each individual." 1 *Chitty on Pleading*, pp. 86, 87.

It is elementary that judgment against one is not a bar to an action against another; it does not merge the cause of action as to the others. Non-joinder of the others cannot be pleaded in abatement. If all are joined, one defendant may recover against the plaintiff, and still the plaintiff recover against another defendant; or different sums may be recovered of each defendant. The plaintiff, therefore, has with each defendant a controversy which is *wholly between himself and that defendant, and which can be fully determined as between them;* which is the test of jurisdiction under the last clause of second section of the act of 1875. No other defendant has the slightest interest in that controversy.

That this court has always recognized a distinction between actions against joint contractors and actions against joint wrong-doers, until the decision in *Pirie* v. *Tvedt*, is evident from several earlier decisions.

In *Vannevar* v. *Bryant*, 21 Wal. 43, the court suggested the possibility of removing a controversy in a suit against several for a tort, under the act of 1866; and in *Hyde* v. *Ruble* the point was urged that the action was for a tort, and the court, as an apparently necessary premise in the opinion, were careful to decide that the action was on contract.

It may be urged against us that the plaintiff has a right to make his action joint or several; and having made it joint, the non-resident defendant has no more right to a trial in the federal court than the plaintiff has as against the resident defendant, to a trial in the state court. But this sort of reasoning would have held the case of *Barney* v. *Latham* not removable. It is unsound. The act of each defendant is, as Mr. Chitty says, separate in its nature. The law allows the plaintiff to sue all defendants together, at his election; just as the rules of equity pleading allowed the joinder of different controversies and several defendants in *Barney* v. *Latham*. The same reason exists in each case for the removal. The non-resident defendant or defendants, *solely* interested in such a controversy, have the right, under the constitution and the removal acts, to a trial in the federal courts. The plaintiff knows the law, and consequently knows of this right before he sues, and may, if he choose, bring two or more suits. If, notwithstanding this, he elects to couple with a cause of action removable by itself one which is not so removable, there is no hardship in making him abide his election, and come to the federal court for trial. And there is an obvious injustice in allowing him to deprive a defendant, by the form of action which he adopts, of a clear and invaluable right.

If the decision in *Pirie* v. *Tvedt* is sustained, and applied to all cases of actions for tort, the results pointed out by Justice Harlan in his dissenting opinion are sure to follow. A plaintiff will invariably, where he wishes to deprive defendants of a right to trial in the courts of the United States, join with them citizens of the same state as

himself, against whom he knows he has no pretense or shadow of claim. If any one supposes this apprehension is not well founded, let him call to mind the general practice which grew up at common law, before parties could be witnesses in their own behalf, of joining as defendants the principal witnesses against the plaintiff for the express purpose of closing their months. Plaintiffs found it desirable to pay costs to such defendants at such a price. They will find the same thing to their advantage if suits of this character cannot be removed.

The remarks of Judge Story in *Smith* v. *Rines*, 2 Story, 344, cannot certainly be authority against our position. The objections to a removal stated by the learned judge in that case were that all the defendants on the record must have the required citizenship, because the judiciary act of 1789 gave the "PARTY" only the right to a removal. If this decision is in point against us, it is in point, with the same force, against the decision of this court in *Barney* v. *Latham*. That case could never have been removed under the act of which Judge Story was speaking.

J. M. FLOWER,
C. W. BUNN,
Counsel for Plaintiffs in Error.

Supreme Court of the United States.

October Term 1885.—No. 905.

JOHN SLOANE, WILLIAM D. SLOANE, HENRY F. SLOANE, THOMAS C. SLOANE AND WALTER W. LAW, PLAINTIFFS IN ERROR,

vs.

MARCUS ANDERSON, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

Brief of Defendant in Error.

STATEMENT OF THE CASE.

This case has been advanced under the 32d rule of the court.

It is a writ of error for the review of an order of the Circuit Court of the United States for the Western District of Wisconsin, (Rec., pp. 44, 45,) remanding a case which had been removed from the Circuit Court of La Crosse county, in said State, under the Act of March 3d, 1875, chapter 137, (18 Statutes, 470.)

The suit was brought by defendant in error, a citizen of the State of Wisconsin, against the defendants Cameron, Losey & Bunn, a law firm, citizens of the State of Wis-

consin, and the defendants W. & J. Sloane, a copartnership, citizens of the State of New York, and John V. Farwell & Company, a copartnership, citizens of the State of Illinois, and Curtiss H. Remy, an attorney, also a citizen of the State of Illinois.

Process was served on the defendants Cameron, Losey & Bunn on the 17th day of April, 1884, and the defendants Farwell & Company appeared on April 25th, 1885, and the defendants Sloane & Company appeared May 10th, 1885.

The complaint alleges in substance that the defendant in error was, on the 28th day of September, 1881, a prosperous merchant, in good credit with wholesale merchants, and was carrying on a large retail dry goods, notion, and carpet business in the city of La Crosse, Wisconsin, and had been for a great number of years theretofore; that on the 28th day of September, 1881, judgments were entered in form against the defendant in error, one in favor of said W. & J. Sloane for $3,602.04, and one in favor of said J. V. Farwell & Company for $1,885.79; that executions were issued by said plaintiffs in error, by said Cameron, Losey & Bunn, as attorneys, by direction of the other plaintiffs in error; that both executions were issued and delivered to the sheriff at the same time; that the executions were regular in form so as to protect the sheriff; that both of said judgments were irregular and void for reasons stated; that both judgments and executions thereon were afterwards set aside and vacated by order of the Supreme Court of the State of Wisconsin; that under and by virtue of said executions and the orders and directions of all the plaintiffs in error, the sheriff of La Crosse county, in the absence of the defendant in error, wrongfully levied upon, seized, and took possession of the entire stock of goods, fixtures, and store of the defendant in error, and seized the keys of the said store, drove out customers and clerks, and retained possession of the same for twenty-five

days; that the stock of goods, fixtures, &c., was worth $30,000; that all the said acts of the said attorneys were fully authorized, and were afterwards duly ratified by said judgment creditors, plaintiffs in error herein; and that the seizure of the goods and store of said defendant in error was the joint act of all the plaintiffs in error. The complaint sets up consequential and special damages, and claims judgment for twenty-five thousand dollars. (Record, pp. 2–6.)

On the 31st day of July, 1884, the plaintiffs in error, Angus Cameron, Joseph W. Losey, and Charles W. Bunn, served their separate answer, admitting in substance the taking of the property of the defendant in error, as alleged in said complaint; that the same was done with authority from the plaintiffs in error; and that plaintiffs in error, Farwell & Company and W. & J. Sloane, copartners, afterwards ratified all of the acts of said plaintiffs in error, Cameron, Losey & Bunn, done and performed by them in said matter. (Rec., p. 8–11.)

On the 15th day of May, 1885, the plaintiffs in error, Farwell & Company and W. & J. Sloane, copartners, filed their separate answers, which are substantially the same as the answer of said plaintiffs in error, Cameron, Losey & Bunn. (Rec., pp. 22–32.)

At the May and November terms, 1884, of the Circuit Court for the county of La Crosse, Wisconsin, the case was regularly called, and at each of those terms it was continued upon the application of the defendants Cameron, Losey & Bunn, plaintiffs in error herein. At the May term, 1885, of said court the case was continued by consent. (Rec., p. 43.)

On the 18th day of May, 1885, the plaintiffs in error W. & J. Sloane, copartners, and Farwell & Company filed in the Circuit Court for the county of La Crosse, Wisconsin, their petition and bond for the removal of said cause to the Circuit Court of the United States for the western

district of Wisconsin, (Rec., p. 38.) Upon the filing of said petition in the Circuit Court of the United States for the western district of Wisconsin, on the 3d day of June, A. D. 1885, the said court remanded said cause to the said Circuit Court for La Crosse county, Wisconsin, to review which order the plaintiffs in error procured a writ of error from this court. (Rec., pp. 44–45.)

ARGUMENT.

I.

This is a joint action of trespass against all the plaintiffs in error. The real cause of action is the taking of the stock in trade of the defendant in error, and the closing of his store by the sheriff, (who is protected by his writ being proper in form,) under the authority, direction, and order of all the plaintiffs in error.

II.

This court has held in numerous cases that a joint action on contract or trespass against several defendants, some of whom are residents of different States, cannot be severed at the option of the defendants, or any one of them.

In the case of *Pirie and others, partners, against Tredt and another, partners*, (Sup. Ct. Rep., Vol. 5, No. 23, p. 1034.) it was held by this court, in a suit brought by a citizen of one State against a citizen of the same State and a citizen of another State, that there was no such separate controversy as entitles the citizen of the other State to remove the cause, even though he answers separately from his co-defendant setting up a separate defence, and the statutes regulating proceedings in the State where the suit was brought allowed judgments to be given in actions *ex con-*

tractu for one or more plaintiffs, or for one or more defendants. That case was a writ of error brought under section 5 of the Act of March 3d, 1875, chapter 137, (18 St., 470,) for the review of an order remanding a cause which had been removed from a State court. The suit was brought by Tvedt Brothers, citizens of Minnesota, against Carson, Pirie, Scott & Company, citizens of Illinois, and Owen J. Wood and Theodore S. Stiles, citizens of Minnesota, to recover damages for the unlawful seizure under a writ of attachment of the stock of goods of the defendants in error, Tvedt Brothers, and the closing up of their store. In that case the court held that there was but a single cause of action, and that was the unlawful act of the plaintiffs in error acting in concert; that the cause of action was several, as well as joint, and that the defendants in error might have sued each defendant separately, or all jointly; that it was for the defendants in error to elect which course to pursue, and that having elected to proceed against all jointly, the plaintiffs in error could not object.

The case at bar is in all respects similar to the case above cited. Here, as there, there is but a single cause of action, and that is the unlawful act of the plaintiffs in error, acting in concert, in seizing the stock of goods of defendant in error and closing up his store. Here, as in that case, the plaintiff elected to proceed against all the plaintiffs in error jointly for the recovery of damages sustained by him by reason of the unlawful act of all the plaintiffs in error.

In *Smith* v. *Rines*, (2 Sumn., p. 338,) approved by this court, it was held that in cases of tort the plaintiff may elect to make his action joint or several, and no defendant can take away this election.

In *Louisville & Nashville R. R. Co.* v. *Ide*, (114 U. S., p. 52,) it was held that the filing of separate answers, tendering separate issues for trial, by several defendants sued jointly in a State court on a joint cause of action, does not divide the suit into separate controversies so as to make it

removable into the Circuit Court of the United States under the Act of March 3d, 1875.

See also *St. Louis & San Francisco Ry. Co.* v. *Wilson*, (114 U. S., 60,) to the same effect.

We rely upon the former decisions of this court to sustain the circuit judge in his ruling, and affirm the order remanding the case to the State court.

M. P. WING,
J. HUBLEY ASHTON,
Counsel for Defendant in Error.

117-275

Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN SLOANE ET AL., Plaintiffs in Error,
vs.
MARCUS ANDERSON, Defendant in Error. } No. 905.

Now comes the defendant in error, and moves the court to advance said cause and order the same placed upon the calendar for argument at the October term of said court, 1885, in advance of all other causes.

The grounds of the motion are that this is an appeal from an order of the Circuit Court for the Western District of Wisconsin remanding said cause to the Circuit Court for La Crosse county, and comes within the provisions of rule 32 of this court.

M. P. WING,
Counsel for Defendant in Error.